



Kurdistan Region

Kurdistan Regional Government

Ministry of Planning Public Contracts Department

Public Procurement Regulation

Annex (e)

Supplemental Procedures for Procurement of Public-Private Partnership (PPP)

In accordance with the jurisdiction vested in the Minister of Planning and with reference to Article (96) of the Public Procurement Regulation Ref. (2) of 2016 We hereby promulgated:

Annex (e)
**Supplemental Procedures for Procurement of Public-Private
Partnership (PPP)**

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Section A. General Provisions

Article 1. Purpose

The purpose of this annex is to supplement the Procurement Regulation with provisions elaborated specifically for the procurement of public-private partnership project agreements, including an additional possible procurement method, in line with the principles enunciated in article 2 of the Procurement Regulation.

Article 2. Definitions

First. "Public-Private Partnership (PPP)" means a contractual arrangement between a contracting authority on one side and a private sector entity on the other, for the provision of public assets, infrastructure and/or public services, where:

- (a) Investments are made and/or management is undertaken by the private sector entity, for a specified period of time,
- (b) there is a well-defined allocation of risk between the private sector and the public entity, and
- (c) the consideration for which consists either solely in the right to exploit the works or services that are the subject of the agreement or it may be stipulated that the private entity receives performance linked payments that are triggered when performance, measurable by the public entity or its representative, achieves specified and pre-determined performance standards.

Second. "Unsolicited Proposal "means a proposal for a PPP Project submitted by a private entity on its own initiative rather than in response to a request from the contracting authority.

Third. "Initial unsolicited proposal" means the first document submitted to the contracting authority in order to be granted a preliminary approval.

Fourth. "Preliminary Approval" means the approval granted by the contracting authority on the basis of the initial unsolicited proposal which allows the proponent to submit a final unsolicited proposal.

Fifth. "Final Unsolicited Proposal" means the final unsolicited proposal submitted by the proponent after it has been granted the preliminary approval.

Sixth. "Direct Negotiation" occurs when a Contracting Authority awards a PPP Project without using a competitive procedure.

Seventh. "Consortium" collaborative grouping of two or more firms that come together on the basis of a contractual agreement (consortium agreement) to bid for a PPP project.

Eighth. "Project Company" a company established by law for the purpose of entering into a contract to implement a PPP project.

Ninth. "Initial selection" The shortlisting process used prior to inviting request for proposals in the procurement of PPP project agreements, to enable the contracting authority to invite only the highest ranked applicants to submit proposals.

Tenth. "Best and final offer (BAFO)" –The procedure under which the contracting authority invites bidders that have submitted substantially responsive proposals to submit their best and final offer.

Eleventh. "Procurement Regulation" means the Public Procurement Regulation adopted by KRG under ref. (2) of 2016 and its annexes.

Article 3. Scope of application

The selection of PPP bidders and the awarding of procurement contracts on a PPP basis shall be conducted in accordance with the Public Procurement Regulation ref. (2) of 2016, subject to the provisions of this Annex.

Section B. Planning and preparation of PPP procurement

Article 4. Prerequisites for PPP procurement

First--Prior to initiating a PPP procurement proceeding, the contracting authority shall ascertain fulfillment of all the necessary requirements for identifying, conducting feasibility assessments and any required environmental impact assessments, and obtaining approval of the Ministry of Planning, pursuant to the implemented procedure for inclusion of the proposed projects by the contracting authorities in the annual investment budget.

Second --The contracting authority shall not provide information in a discriminatory manner which may give some bidders an advantage over others.

Article

5. Project officer

First --The contracting authority shall designate a person possessing the requisite knowledge and experience, drawn either from inside or from outside the contracting authority, as a project officer for the PPP project.

Second. The duties of the project officer shall include managing the project through the procurement planning and acquisition stages, and monitoring the proper implementation of the project.

Third --In addition to the project officer, a transaction advisor may be hired to assist the procurement and negotiation team during the acquisition phase. . The transaction advisor shall possess experience in similar projects, and in all phases of the PPP project, and, unless the advisor is a multilateral intergovernmental organization or bilateral donor agency, shall be appointed by way of a competitive procedure in accordance with the Procurement Regulation.

Article 6. Formulation of specifications

Technical specifications for a PPP project shall be formulated on the basis of the performance and/or outputs required by the contracting authority, in an objective manner so as to maximize competition and avoid creating unnecessary obstacles to participation by bidders in the procurement proceedings.

Article 7. Cost estimation

First --For the purposes of establishing its cost estimate for the PPP procurement, the contracting authority shall take into account the financial models elaborated in the feasibility assessment phase of the project, and updated to reflect any additional, more detailed definition of the project as presented in the request for proposals.

Second --For the purposes of facilitating a proposal evaluation and negotiation process that enables the contracting authority to achieve best value for money, the contracting authority may refer, as a comparative reference, to the cost of utilizing the option of delivery of the infrastructure or service by the public sector.

Section C. PPP Procurement procedures

Article 8. Solicitation of proposals and conditions required in proposals

First --The contracting authority shall solicit proposals from qualified bidders, which can be ensured by way of a prequalification proceeding in accordance with article (23) of the Procurement Regulation, or by a call for expressions of interest followed by the establishment of a list of initially selected bidders who will be invited to submit proposals.

Second. When the contracting authority establishes a list of initially selected bidders it shall ensure that the list includes a sufficient number of bidders to provide effective competition, provided that number of bidders is not less than three.

Third --In order to establish a list of initially selected bidders from whom proposals will be solicited, the contracting authority shall publish the advertisement in accordance with the procedures outlined in paragraph (Second) of article (22), of

the Procurement Regulation. The advertisement shall contain the following information:

- a- The name, address and contact information of the contracting authority;
- b- A description of the subject matter of the PPP procurement, to the extent known, the type of PPP arrangement involved [Build-Operate-Transfer (BOT), Design-Build-Operate (DBO), etc.], and the desired or required time and location for the provision of such subject matter;
- c- An indication of how the prequalification documents or, if an initial selection approach is being applied, any initial selection documents, may be obtained providing additional, more detailed information about the project;
- d- An indication of the application of the procedures in this Annex;
- e- The criteria and procedures to be used for ascertaining the qualifications of bidders or, if applicable, establishing a list of initially selected bidders with a limitation on the number of bidders that will be invited to participate, and identify the certificates, documents and documentary evidence or other information that the procuring authority deems necessary to be presented by bidders with their proposals, in conformity with the Procurement Regulation;
- f- If a price is to be charged for the request for proposals, the means and currency of payment;
- g- The language or languages in which the request for proposals is available;
- h- The manner, place and deadline for presenting proposals;
- i- that it will request proposals only from bidders that have been prequalified or, if initial selection is applied, only from the initially selected bidders;

Fourth --In order to be prequalified or, if applicable, included in the list of initially selected bidders, interested bidders must meet objectively justifiable criteria that the contracting authority considers appropriate in the particular proceedings, as stated in the prequalification or initial selection documents. Those criteria shall be confined to the types of eligibility and qualification criteria referred to in the Procurement Regulation, and shall include, in addition to eligibility criteria, the following:

- a- Adequate professional and technical qualifications, human resources, equipment and other physical facilities as necessary to carry out all the phases of the project, including design, construction, operation and maintenance;

- b- Sufficient ability to manage the financial aspects of the project and capability to sustain its financing requirements; and
- c- Appropriate managerial and organizational capability, reliability and experience, including previous experience in operating similar infrastructure facilities.

Fifth --When the prequalification approach is applied, all bidders that meet the criteria disclosed in the prequalification documents shall be permitted to participate in the procurement proceeding. When the initial selection approach is applied, the contracting authority shall select bidders for inclusion in the proceeding that acquired the best rating, up to the maximum number indicated in the pre-selection documents but at least three.

Article 9. Participation by consortia

First –a. The contracting authority, when first inviting the participation of bidders in the procurement proceedings, may allow them to form bidding consortia.

- b. The proposals submitted by the consortia shall be associated with the certificates and documents related to the criteria and qualifications in accordance with paragraph Fourth of article (8) of this annex, and shall relate to the consortium as a whole and to its individual participants at the same time.

Second –a- Each member of a consortium that submits a proposal is bound jointly and severally for the obligations of the consortium as a bidder.

- b- At later stages, when the contracting authority may be dealing with a single entity project company established to implement the project, that project company may be solely responsible for meeting all the requirements under the project agreement.

Third --Each member of a consortium may participate, either directly or indirectly; like a subsidiary company, in only one consortium submitting a bid, and not also in another proposal at the same time. A violation of this rule shall cause the disqualification of the consortium and of the individual members and the rejection of all the proposals involved in the overlapping participation. This rule shall not, however, preclude a firm from being a subcontractor in more than one proposal, or an individual member to be a team member in more than one proposal.

Fourth -- When considering the qualifications of bidding consortia, the contracting authority shall consider the capabilities of each of the consortium members and assess whether the combined qualifications of the consortium members are

adequate to meet the needs of all phases of the project, in accordance with the qualification requirements specified in the advertisement.

Fifth --Replacement of a member, upon consortium's request whether during the competition or implementation, shall be conditional on procuring authority prior approval. Upon approval, the new member shall have at least the same qualifications of the replaced member. Otherwise, a contracting authority may disqualify or review the terms of a project agreement concluded with a consortium where one of its members is replaced

Article 10. Request for proposals

First--The request for proposals shall be provided by the contracting authority to each prequalified or initially selected bidder, provided that the bidder pays the fee, if any. The request for proposals shall include at a minimum the following information:

- a- name, address and contact information of the contracting authority;
- b- description of the object of the procurement including technical, performance indicators and other parameters, service levels, which proposal shall meet, as well as the required time and location for the performance of the contract, including the contracting authority's requirements regarding safety and security standard and environmental protection;
- c- the level of financial support that the contracting authority is prepared to offer [guarantees, early milestone payments (payments made in the development and early stages of the PPP project, before availability of the asset), etc., as agreed upon in the project agreement;
- d- the draft PPP project agreement, with, subject to subparagraph (j), an indication that the draft project agreement shall be discussed with all qualified bidders and that a final draft shall be provided to all bidders prior to the proposal submission date;
- e- The means by which, along the lines of the procedure in article (25) of the Procurement Regulation, bidders may seek clarification of the request for proposals and a statement as to whether the contracting authority intends to convene a meeting of bidders at this stage;
- f- Any element of the description of the subject matter of the procurement or term or condition of the project agreement that will not be the subject of negotiation during the procedure;
- g- Instructions for preparing and presenting proposals;

- h- The criteria for evaluation of proposals, the relative weight of the criteria, and the manner in which they will be applied in the evaluation and comparison of proposals, in accordance with paragraph (Second) of article (11) of this annex;
- i- The desired format and any instructions, including any relevant timetables, applicable in respect of the proposal, including that technical and financial proposals shall be submitted in separate, sealed envelopes;
- j- Notification of the possibility of negotiations with participating bidders, if the contracting authority intends to engage in negotiations; and
- k- Any other requirements that may be established by the contracting authority in conformity with the Procurement Regulation relating to the preparation and presentation of proposals and to the procurement proceedings.

Second—The request for proposals may establish thresholds with respect to quality, technical, financial and commercial aspects. Proposals that fail to achieve the thresholds shall be regarded as non-responsive and rejected from the procurement proceeding.

Third --The contracting authority shall respond promptly to any request by a bidder for clarification of the request for proposals, submitted to the contracting authority within a reasonable time, as specified, in the request for proposals, prior to the deadline for the submission of proposals, and shall promptly circulate the response to all bidders without revealing the source of the request.

Fourth --The request for proposals shall recommend, when appropriate, for bidders to visit and examine the project site and surrounding area to obtain, on their own responsibility, any necessary information for preparing the proposal. Bidders shall bear any costs arising from any such visits.

Fifth --The contracting authority may hold a preliminary meeting with the bidders that have been prequalified, or initially selected, for the purposes of clarifying the request for proposals. All requests for clarification and responses thereto shall be reflected in minutes of the meeting, which shall be provided to all prequalified or initially selected bidders.

Sixth --Any modification of the request for proposals, including modification of the criteria for evaluating proposals referred to in sub-paragraph (h) of paragraph (First) of this article, shall be communicated to all bidders participating in the request-for-proposals proceedings.

Seventh— a- The request for proposals shall set forth the requirements with respect to the issuer and the nature, form, amount and other principal terms

and conditions of any required bid security, and the same information for any performance security that might be required by the contracting authority.

b- A bidder shall not forfeit any bid security that it may have been required to provide, other than in cases referred to in paragraph second of article (27) of the Procurement Regulation, and in case of:

1. Failure to submit its best and final offer (BAFO), if applicable, within the time limit prescribed by the contracting authority pursuant to paragraph (Tenth) of article (11) of this annex;
2. Failure to provide required security for the fulfillment of the project agreement after the proposal has been accepted or to comply with any other condition prior to signing the project agreement specified in the request for proposals.

Article 11. Opening and evaluation of proposals and negotiation

First –a- The contracting authority shall open the proposals at the expiry of the proposals submission deadline, as specified in the request for proposals, at the place specified in the request for proposals, and in the presence of the bidders who choose to attend.

b- If proposals are submitted in the form of two separate envelopes for technical and financial proposals, the proponents shall be invited to the opening of the technical proposals as well as to the opening of the financial proposals if those are opened separately, as may be specified in the bidding documents.

Second -- The contracting authority shall set and disclose to bidders in the request for proposals the criteria for assessment of proposals, including the relative weight of each such criterion and the evaluation methodology and procedures to be applied in the proposals assessment process. Such criteria apply to:

- a- the managerial and technical competence of the bidder;
- b- the effectiveness of the proposal submitted by the bidder in meeting the requirements of the contracting authority as set forth in the request for proposals;
- c- the price or financial proposal submitted by the bidder for carrying out its proposal and the cost of operating, maintaining and repairing the proposed goods, construction or services.

Third--A proposal evaluation committee shall be constituted for the purposes of evaluating the proposals received in a PPP procurement proceeding. The committee shall consist of:

- a- technical experts, including legal and other relevant expertise, from the contracting authority and/or experts outside of the contracting authority.
- b- a representative of the concerned ministry or entity.
- c- a representative of the Ministry of Planning / PPP procurement unit.
- d- A representative of the concerned governorate or the independent administration.

Fourth-- a- The contracting authority shall examine all proposals received against the established minimum requirements and shall reject each proposal that fails to meet these minimum requirements on the ground that it is non-responsive;

b- A notice of rejection and the reasons for the rejection shall be promptly dispatched to each respective bidder whose proposal was rejected.

Fifth--a- The criteria for the evaluation and comparison of the technical proposals, as disclosed in the request for proposals, shall include at least the following:

1. Technical soundness;
2. Compliance with environmental standards; and
3. Operational feasibility;
4. The extent to which the proposal demonstrates the bidder's ability to meet the required performance standards over the life of the project agreement as outlined in the request for proposals.

b- The criteria for the evaluation and comparison of the financial and commercial proposals, as appropriate and as disclosed in the request for proposals, shall include:

1. The present value of the proposed tolls, unit prices and other charges over the operational period, if the request for proposals leaves it up to bidders to propose the levels of such charges and applying a discount rate specified in the request for proposals;
2. The present value of the proposed direct payments by the contracting

authority, if any, and applying a discount rate specified in the request for proposals;

3. Other financial criteria as may be specified in the request for proposals taking into account the nature of the PPP contract;
4. Where applicable and to be determined on a competitive basis, the extent of financial support from the contracting authority in the form of availability payments, if any, expected from any public authority of the Region;
5. The soundness of the proposed financial arrangements; and
6. The social and economic development potential offered by the proposals

Sixth --If the request for proposals provides for a negotiation stage, the contracting authority shall invite each bidder that presented a responsive proposal, within any applicable maximum, to participate in the negotiation.

Seventh –a- Any negotiations between the contracting authority and a bidder shall be confidential;

b- The contracting authority shall treat proposals in such a manner so as to avoid the disclosure of their contents to competing bidders;

c- Subject to article (30) of the Procurement Regulation, one party to the negotiations shall not reveal to any other person any technical, price or other market information relating to the negotiations without the consent of the other party.

Eighth --Any requirements, guidelines, documents, clarifications or other information that is communicated by the contracting authority to a bidder shall be communicated at the same time and on an equal basis to all other bidders, unless such information is specific or exclusive to that bidder or such communication would be in breach of the confidentiality provisions of subparagraph c of paragraph seventh of this article and article (30) of the Procurement Regulation.

Ninth -- During the negotiations, the contracting authority shall not modify the subject matter of the procurement, any qualification or evaluation criterion, any minimum requirements, or any term or condition of the project agreement that is not subject to the negotiation as specified in the request for proposals in accordance with subparagraph (f) of paragraph (First) of article (10) of this Annex.

Tenth --Following the completion of negotiations, the contracting authority shall request all bidders remaining in the proceedings to present a best and final offer (BAFO) with respect to all aspects of their proposals, which shall not be subject to

negotiation. The request shall be in writing and shall specify the manner, place and deadline for presenting best and final offers.

- Eleventh --a-** The contracting authority shall rank all responsive proposals on the basis of the evaluation criteria. The successful proposal shall be the proposal that best meets the needs of the contracting authority as determined only in accordance with the criteria and procedure for evaluating the proposals set out in the request for proposals and any modification to the request for proposals.
- b- In particular in the case of less complex and smaller projects, such as the selection of a concessionaire to operate already existing infrastructure, the contracting authority may decide to forego the best and final offer stage referred to in paragraph tenth of this article.

Article 12. Direct negotiation

First --When, in response to a solicitation published in accordance with paragraph (Second) of article (8), if one bidder that meets the qualification requirements responds, the contracting authority shall re-advertise the solicitation of proposals. Re-advertisement shall take place only after the contracting authority has investigated the grounds for lack of adequate response to the initial solicitation, including ascertaining whether the qualification criteria have been set appropriately or whether the project has been designed appropriately, and has taken any necessary remedial steps, including revision and updating of solicitation documents, if need be.

Second --If, following the re-advertisement,

- a- No bidder responds or only one bidder responds and that bidder meets the qualification requirements set forth in the advertisement, presents itself and subsequently presents a responsive proposal.
- b- Or more than one bidder responds, but only one bidder meets the qualification requirements set forth in the advertisement, presents itself and subsequently presents a responsive proposal.
- c- Or more than one bidder is included in the list of initially selected bidders, but only one bidder submits a responsive proposal.

The contracting authority may directly negotiate the project agreement with that one bidder.

Third --Award of a project agreement on the basis of direct negotiation is also permissible, subject to adhering to the implemented procedure for inclusion of the proposed projects by the contracting authorities in the annual investment budget at the Ministry of Planning, in the following cases:

- a- When there is an urgent need for ensuring continuity in the provision of the service and when engaging in a competitive selection procedure would therefore be impractical.
- b- Reasons of national defense or national security.
- c- Cases where there is only one source capable of providing the required service (for example, because it requires the use of patented technology or unique know-how).
- d- When an invitation to the pre-selection proceedings or a request for proposals has been issued in the past but no proposals were submitted or all proposals failed to meet the evaluation criteria set forth in the request for proposals.

Section D. Unsolicited proposals

Article 13. Admissibility of unsolicited proposals

First -- As an exception to article 8 of this annex, the contracting authority may consider unsolicited proposals pursuant to the procedures set forth in below paragraphs of this article, provided that:

- a- such proposals do not relate to a project for which procurement procedures have been initiated or announced.
- b— and at the outset, the proponent of the unsolicited proposal and the contracting authority sign a memorandum of understanding acknowledging the applicability of the procedures set forth in this article.

Second -- Procedures for determining the admissibility of unsolicited proposals include the following:

- a- First, there should be a preliminary phase where the proponent submits a short initial unsolicited proposal to the contracting authority. The purpose of this preliminary phase is:
 1. to verify whether the admissibility conditions for an unsolicited proposal are met and
 2. to lay out in advance the rules governing the treatment of the final version of the unsolicited proposal.

- b- Following receipt and preliminary examination of an unsolicited proposal, the contracting authority shall promptly inform the proponent whether or not the project is considered to be potentially in the public interest, taking into account factors including the appropriateness of the contractual arrangements and the reasonableness of the proposed project risks.
- c- If the project is considered to be potentially in the public interest, and is granted preliminary approval by the contracting authority, it shall invite the proponent to submit a comprehensive final unsolicited proposal, containing the detailed information on the proposed project to allow the contracting authority:
 - 1. to make a proper evaluation of the proponent's qualifications, the technical and economic feasibility of the project, including a technical and economic feasibility study, an environmental impact study and satisfactory information regarding the concept or technology contemplated in the proposal; and
 - 2. to determine whether the project is likely to be successfully implemented in the manner proposed in terms acceptable to the contracting authority.
- d. In considering an unsolicited proposal, the contracting authority shall respect the rights of the intellectual property or other exclusive rights contained in, arising from or referred to in the proposal.
- e- The contracting authority shall not make use of information provided by or on behalf of the proponent in connection with its unsolicited proposal other than for the evaluation of that proposal, except with the consent of the proponent.
- f- Except as otherwise agreed by the parties, the contracting authority shall, if the proposal is rejected, return to the proponent the original and any copies of documents that the proponent submitted.

Third – a- In the case of unsolicited proposals that do not involve rights of intellectual property or other exclusive rights, and the contracting authority therefore considers that-

- 1. The envisaged output of the project can be achieved without the use of any right of intellectual property, or other exclusive rights owned or possessed by the proponent; and
- 2. The proposed concept or technology is not truly unique or new.

Except in the circumstances set forth in article (45) of the Procurement Regulation, the contracting authority shall, if it decides to implement the project, initiate a procurement proceeding in accordance with section C of this annex, including the solicitation procedures in accordance with article (8). The proposal price of the original proponent shall not be

disclosed and the original proponent shall be required to resubmit a formal proposal.

b- The proponent shall be invited to participate in the procurement proceedings initiated by the contracting authority pursuant to sub-paragraph (a) of this paragraph and may, if so and to the extent provided in the memorandum of understanding referred to in paragraph first of this article:

1. be compensated for costs associated with the preparation of the unsolicited proposal, and
2. be granted such other privileges as specified in the memorandum of understanding, including a guaranteed right of the original proponent to participate in a "best and final offer" (BAFO) round.

c- Following the receipt, evaluation and ranking of the proposals, the contracting authority shall select the two best ranked-proposals for participation in the second stage, involving submission of best and final offers (BAFO). The original proponent shall be automatically invited to participate in that second stage even if the original proponent's proposal was not among those selected following completion of the first stage for participation in the BAFO stage. The winning proposal shall only be selected following the BAFO stage.

Fourth -- In the case of unsolicited proposals involving rights of intellectual property or other exclusive rights

- a- If the contracting authority determines that the conditions of sub-paragraph (1) of sub-paragraph (a) of paragraph (Third) of this article are not met, it shall not be required to carry out a procurement procedure pursuant to section C of this annex. However, the contracting authority may still seek to obtain elements of comparison for unsolicited proposal; the contracting authority shall publish a description of the essential output elements of the proposal with an invitation for other interested bidders to submit proposals by a specified deadline.
- b- If no proposals are received, the contracting authority may engage in negotiations with the original proponent.
- c- If the contracting authority receives proposals in response to an invitation issued pursuant to subparagraph a of this paragraph, the contracting authority shall invite the proponents to negotiations. In the event that the contracting authority receives a sufficiently large number of proposals, which appear prima facie to meet its infrastructure needs, the contracting authority shall request the submission of proposals pursuant to section C of this annex, subject to any incentive or other benefit that may be given to the

bidder who submitted the unsolicited proposal in accordance with subparagraph (b) of paragraph (Third) of this article.

Section E. Project implementation

Article 14. Project agreement

First --The contracting authority shall enter into the project agreement in writing with the successful bidder. The project agreement shall stipulate at a minimum the following:

- a- the rights and the obligations of the contracting authority and of the private sector party, including the required level of service to be provided by the private sector party;
- b- the duration of the project agreement;
- c- delineation of public and private assets, and provision for transfer of public assets to the private sector party;
- d- the required structure for management by the private sector party of its performance;
- e- provision of assistance by the contracting authority to the private sector party in obtaining licenses and permits needed to implement the project;
- f- financial arrangements, including the source and nature of payments to the private sector party, financial controls, financial accountability and financial reporting requirements;
- g- allocation of risks as between the parties;
- h- remedies available to the parties in case of default in performance;
- i- the return of assets to the contracting authority at the expiry of the project agreement;
- j- applicable law; and
- k- dispute settlement.

Second –The Ministry of Planning / PPP procurement unit may issue standardized rules, particularly for clauses such as force majeure, termination, compensation, change in law and dispute settlement (including international arbitration).

Article 15. Project agreement signature

First --After obtaining the necessary approvals of the project agreement, the authorized person in the contracting authority shall sign the project agreement on behalf of the contracting authority.

Second --The project agreement shall be registered and copies distributed in accordance with applicable procedures.

Article 16. Administration and management of project implementation

First --In addition to ensuring the transfer of assets to the private sector party, the contracting authority shall monitor and evaluate the implementation of the project agreement to ensure that it is implemented in accordance with its terms and properly managed, and that any assets transferred to the control of the private sector party are properly protected and used. To that end, the contracting authority shall ensure that the necessary contract management and monitoring resources are in place and that procedures are applied for:

- a- monitoring and measurement of performance and outputs;
- b- communication with the private sector party;
- c- ensuring that service delivery conforms to required quality and reliability levels, that project facilities are regularly maintained, as specified in the project agreement, and that required reporting by the private sector entity is conducted;
- d- engagement of stakeholders, including in monitoring and evaluation of implementation;
- e- dispute avoidance, where feasible, and resolution;
- f- oversight of ongoing contract management;
- g- ensuring regular accounting and auditing of project facilities as may be specified in the project agreement;
- h- ensuring fulfillment of any applicable technology and skills transfer requirements specified in the project agreement, including for the eventual takeover of management of the facility by the public sector; and
- i- preparation of reports on the project as may be required or otherwise appropriate.

Second --For the purposes of conducting the monitoring referred to in paragraph (First) of this article, the contracting authority shall, in consultation with the private sector part, develop a monitoring and evaluation framework. The key elements of the framework shall include:

- a- the project management plan;
- b- performance indicators;
- c- reporting requirements, including periodic progress reporting;
- d- confirmation and valuation of project assets;
- e- external audit and external reporting; and
- f- engagement with stakeholders.

Article 17. Publishing and entry into effect

First- This Annex is to form an integral part of the Public Procurement Regulation ref. (2) of 2016.

Second- This Annex shall be published in the Official Gazette of Kurdistan.

Third- This Annex shall enter into effect after lapse of (180) one hundred eighty days following the date of publishing.

Dr. Ali Sindi
Minister of Planning