

Federal Law No. (12) of 2023

On Regulating the Partnership between the Federal Public Sector and the Private Sector

We, Mohamed bin Zayed Al Nahyan

President of the United Arab Emirates,

Having reviewed the Constitution,

And Federal Law No. (1) of 1972 on the Competencies of Ministries and the Powers of Ministers, and its amendments,

And Federal Law No. (5) of 1985 promulgating the Civil Transactions Law, and its amendments,

And Federal Decree-Law No. (15) of 2018 on the Collection of Public Revenues and Funds,

And Federal Decree-Law No. (16) of 2018 on Real Estate Properties of the Federal Government,

And Federal Decree-Law No. (26) of 2019 on Public Finance, and its amendments,

And Federal Decree-Law No. (32) of 2021 on Commercial Companies,

And based on the proposal of the Minister of Finance, the approval of the Cabinet and the Federal National Council, and the ratification of the Federal Supreme Council,

We have issued the following Law:

Article (1)

Definitions

For the purposes of implementing the provisions of this Law, the following words and phrases shall have the meanings assigned to each of them, unless the context otherwise requires:

The State: The United Arab Emirates.

The Government: The Federal Government of the State.

The Ministry: The Ministry of Finance.

The Minister: The Minister of Finance.

Federal Public Sector: Any ministry established in accordance with Federal Law No. (1) of 1972 on the Competencies of Ministries and the Powers of Ministers, and its amendments, as well as any federal authority, institution, regulatory body, or any other entities affiliated with the Government.

Concerned Federal Entity: The federal entity responsible for procuring the project.

General Budget Committee: The committee formed by the Cabinet.

Private Sector: Commercial companies and institutions (this does not include commercial companies and institutions wholly owned by the Government).

Potential Partnership Project: Any project that, after a feasibility assessment, is proven to meet the partnership project criteria specified in the Partnership Projects Manual.

Partnership Project: A contractual relationship between a federal entity (or several federal entities) and one or more partners from the private sector, established in accordance with the provisions of this Law, for the purpose of providing a public service or operating a public facility.

Partner: Any legal person or a consortium of legal persons from the private sector that is a party to the partnership contract.

Project Company: Any company or institution established by the Partner to implement the project.

Project Agreement: A contract concluded between the Concerned Federal Entity and the Partner to regulate the relationship between the parties regarding the Partnership Project.

Project Team: The team responsible for developing the project idea and procuring it.

Grievance Committee: A grievance committee formed by the Minister in accordance with the provisions of Clause (2) of Article (20) of this Law.

Partnership Projects Manual: A manual issued in accordance with the provisions of this Law, which includes the rules, provisions, and procedures related to partnership projects.

Article (2)

Objectives of the Law

The Law aims to achieve the following:

1. Regulate partnership projects between the federal public sector and the private sector in the State.
2. Encourage the private sector to participate in developmental and strategic projects, and increase investment in projects with economic, social, and service value.
3. Enable the Government to implement its strategic projects efficiently and effectively.
4. Benefit from the financial, administrative, organizational, technical, and technological capabilities and expertise available in the private sector, enabling society to obtain the best services in a manner that achieves the best value for money.
5. Increase productivity and improve the quality of public services, while ensuring effective management for the development of those services.
6. Transfer knowledge and expertise from the private sector to federal entities, and train and qualify employees of federal entities in the State on project management and operation.
7. Implement projects that provide added value to public funds.
8. Reduce the financial and operational risk burdens on the Government that may result from project implementation.
9. Shift the management of some infrastructure projects and public services from direct implementation, operation, and management to other forms of implementation in accordance with approved policies and controls to achieve quality.
10. Stimulate the competitiveness of projects in local, regional, and global markets.

Article (3)

Scope of Application

The provisions of this Law shall apply to any partnership project fully or partially funded by the private sector and procured by a federal entity.

Article (4)

Exemptions

The provisions of this Law shall not apply to:

1. Partnership contracts concluded before the entry into force of this Law, without prejudice to the provisions of Article (32) of this Law.
2. Outsourcing of services specified in the Partnership Projects Manual.
3. Projects whose value is below the financial threshold stipulated in the Partnership Projects Manual.
4. Privatization projects for public assets and services.
5. Supply and procurement contracts related to national security as specified in the Partnership Projects Manual.
6. Federal entities, sectors, and projects that are exempted by a Cabinet decision.

Article (5)

Competencies of the Ministry

For the purposes of implementing this Law, the Ministry shall undertake the following competencies:

1. Propose the Partnership Projects Manual and submit it to the Cabinet for approval.
2. Prepare and issue a guide for the management and implementation of partnership projects, including provisions regulating the management and supervision of partnership projects during the implementation phase.
3. Subject to Clause (1) of this Article, prepare, issue, and amend manuals and all templates and documents related to partnership projects.

4. Propose updates to the legislation regulating partnership projects between federal entities and the private sector in accordance with best international practices.
5. Work to provide a suitable environment to attract the private sector to participate in partnership projects and overcome difficulties that may hinder the success of partnership projects.
6. Provide assistance and support to federal entities in the process of procuring partnership projects in accordance with this Law if required, and encourage federal entities to use the partnership project approach.
7. Study and evaluate proposals and feasibility studies submitted by federal entities and the private sector and determine the feasibility of procuring them as a partnership project, after coordinating with relevant entities if necessary.
8. Guide federal entities regarding the mechanism for preparing feasibility studies and other studies related to the evaluation of partnership projects.
9. Provide advice to federal entities regarding the procurement and implementation of partnership projects if necessary, at the Ministry's discretion.
10. Establish a data registry for partnership projects.
11. Periodically measure the success of partnership projects and submit periodic reports thereon to the General Budget Committee.

Article (6)

Competencies of the Concerned Federal Entity

For the purposes of implementing this Law, the Concerned Federal Entity shall be responsible for the following:

1. Proposing partnership projects and preparing all necessary studies to evaluate the partnership project and determine its financial, economic, technical, and social feasibility, as well as the risks and impacts thereof, in accordance with the requirements of the Partnership Projects Manual.
2. Preparing the initial budget for the partnership project in cooperation with the Project Team, in accordance with the manuals and templates

- related to budget preparation issued by the Ministry and the Partnership Projects Manual.
3. Determining all technical specifications and requirements related to the partnership project.
 4. Coordinating with the Ministry to formulate the structure of the partnership project, including determining the appropriate partnership methods for the nature of the project, the nature of the contribution of the partnership parties to the project, and the distribution of shares and financial returns resulting therefrom.
 5. Proposing service fees related to the partnership project.
 6. Supporting the Project Team in preparing the procurement documents and the terms and specifications booklet for the partnership project.
 7. Fulfilling its obligations stipulated in the Project Agreement and exercising the rights contained therein.
 8. Coordinating with other concerned governmental and federal entities to ensure the alignment of the partnership project's outcomes with their plans.
 9. Supervising the proper implementation of partnership projects by the private sector in accordance with the provisions of Article (25) of this Law, without prejudice to the competencies of other regulatory bodies.
 10. Working to overcome difficulties that prevent partnership projects from achieving their desired objectives in coordination with the competent authorities in the State.
 11. Preparing periodic quarterly reports for each of its procured partnership projects and submitting them to the Ministry.

Article (7)

Formation of the Project Team

1. A Project Team shall be formed for each potential partnership project, and the Partnership Projects Manual shall specify the mechanism for forming the team.
2. The Project Team shall undertake the following:
 1. Coordinate and manage the procurement procedures for the partnership project and the selection of the Partner.

2. Prepare the initial budget for the project in coordination with the Concerned Federal Entity.
3. Prepare the procurement documents, the terms and specifications booklet for the partnership project, and the Project Agreement.
4. Evaluate and open bids in accordance with the evaluation procedures and criteria specified in the procurement documents and the Partnership Projects Manual.
5. Ensure the application of the principles of transparency, fair competition, and equal opportunity in accordance with the provisions of this Law and the Partnership Projects Manual.
6. Any other competencies stipulated in this Law or in the Partnership Projects Manual.

Article (8)

Project Selection

1. The Concerned Federal Entity, the Ministry, or the private sector may propose a partnership project.
2. The Ministry, together with the Concerned Federal Entity, shall decide whether the proposed project to be procured as a partnership project deserves to be selected as a potential partnership project, in accordance with the criteria specified in the Partnership Projects Manual.
3. When selecting a project as a potential partnership project, it must be evaluated in accordance with the procedures stipulated in the Partnership Projects Manual.
4. The Partnership Projects Manual shall specify the criteria and studies required in the project selection and approval stages.

Article (9)

Project Proposal by the Federal Entity

A federal entity wishing to enter into a partnership project shall adhere to the following:

1. Ensure that the project meets the partnership project criteria specified by this Law and the Partnership Projects Manual, and study the suitability of procuring any of its projects as a partnership project.
2. Procure the project using an alternative method if there are strategic or public interest reasons.
3. Provide evidence that it has considered the partnership project option for its projects whenever requested by the Ministry.
4. Prepare a presentation for the project when it wishes to enter into a partnership project, including justifications for selecting the project, and submit it to the Ministry in accordance with the procedures specified in the Partnership Projects Manual.

Article (10)

Project Proposal by the Private Sector

1. The private sector may submit an initiative to any federal entity or the Ministry to procure a project as a partnership project. If the initiative is submitted directly to a federal entity, it must be forwarded to the Ministry in accordance with the procedures set forth in this Law and the Partnership Projects Manual.
2. The Partnership Projects Manual shall specify the provisions governing partnership project initiatives submitted by the private sector, including the following:
 1. The mechanism for submitting, evaluating, accepting, and procuring initiatives.
 2. Guarantees for the protection of confidential information, intellectual property rights, trade secrets, and any exclusive rights associated with the initiative.
 3. Incentives and benefits provided to the initiator.

Article (11)

Project Approval

1. The federal entity or the private sector shall submit the project to the Ministry for approval as a potential partnership project, including the details specified in the Partnership Projects Manual.
2. The Ministry shall study and evaluate the project in accordance with the requirements of this Law and the Partnership Projects Manual.
3. If the project meets the requirements for partnership projects and there is no financial appropriation for the project, the Ministry shall submit the proposal for initial approval of the project by the General Budget Committee, and after its approval, it shall be submitted to the Cabinet for final approval.
4. The Ministry may submit the project directly to the Cabinet if there is a financial appropriation for the project.
5. If the Cabinet approves the project, the Ministry shall notify the Concerned Federal Entity of the project's approval.
6. The Partnership Projects Manual shall specify the approvals required at each stage of the development and procurement of the partnership project.

Article (12)

Budget Approval

1. The Project Team, in cooperation with the Concerned Federal Entity, shall develop the initial budget for the partnership project in accordance with the budget preparation provisions issued by the Ministry.
2. No partnership project that entails expenses for any federal entity may be procured unless the cost of the project for its entire implementation period has been approved by the Government.

Article (13)

Government Financial Guarantees

1. Subject to the legislation in force in the State, the Concerned Federal Entity may - based on the project's needs - propose to the Ministry the issuance of a government guarantee to secure the financial obligations of the federal entity as stipulated in the terms of the Project Agreement.
2. The Partnership Projects Manual shall specify the conditions and procedures for requesting a government financial guarantee and the mechanisms for deciding on it.

Article (14)

Types of Partnership Projects

Partnership projects implemented in accordance with this Law shall be of one of the following types:

1. Build-Operate-Transfer (BOT).
2. Build-Own-Operate-Transfer (BOOT).
3. Build-Own-Operate (BOO).
4. Financial Utilization of Assets.
5. Build-Own-Lease-Transfer (BOLT).
6. Management Contracts.
7. Any other types specified by the Partnership Projects Manual.

Article (15)

Procurement Methods and Procedures

1. The procurement of partnership projects shall be in accordance with one of the following methods:

Two-Stage Method: The procurement shall be as follows:

- (1) First Stage: A pre-qualification of a group of private sector entities that have expressed interest in the project is conducted.
- (2) Second Stage: The full procurement documents are issued exclusively to the pre-qualified potential partners.

Expedited Procedure Method: Procurement may be through an expedited procedure method, which consists of a single stage - without pre-qualification - in any of the following cases:

- (1) There is a need to procure the project on an expedited basis.
- (2) If the Project Team deems pre-qualification unnecessary due to a limited number of suitable potential partners in the market, or the absence of a complex technical aspect of the project, making competition limited to financial aspects only, or for any other reason that does not require partner qualification.

Direct Appointment Method: Procurement may be through a direct appointment method, where the Concerned Federal Entity negotiates directly with one or more potential partners. This method is used only in the following cases:

- (1) The need to provide assets or a service on an expedited basis that is not compatible with the procedures specified in paragraphs (a) and (b) of Clause (1) of this Article.
- (2) The existence of only one potential partner in the market with the capability to implement the project.
- (3) Some or all components of the project are related to national security or the protection of state secrets.
- (4) Any other necessary and urgent matters related to the public interest, provided that the Minister approves the use of this procedure for their procurement.

2. In the event of a single potential partner for the project, the Concerned Federal Entity may terminate the bid or proceed with the procurement and award the project to the potential partner, subject to the following two conditions:
 - a. Fulfillment of the requirements of the procurement documents.
 - b. Evidence of sufficient value for money in the bid, achieving a value for money assessment.
3. The Partnership Projects Manual shall specify the procedures for each of the procurement methods mentioned in this Article.

Article (16)

Bid Submission

1. A bid for a partnership project shall be submitted either by a single partner from the private sector or by a consortium composed of several partners from the private sector.
2. If the bid is from a consortium of partners, the bid must be submitted in the name of the consortium. It is prohibited for any member of the consortium to submit individual bids, either directly or through another consortium, or for the bid to be submitted by a company in which a consortium member holds a majority of the capital or has control over its management, unless the bidding conditions state otherwise or with the approval of the Concerned Federal Entity.
3. Any federal entity may participate in the procurement for a partnership project, after obtaining the Ministry's approval for such participation.

Article (17)

Bid Evaluation

1. The Project Team shall study and evaluate the submitted bids from technical, financial, and legal aspects, and determine the accepted and rejected bids, assigning an evaluation score to each bid according to the evaluation criteria specified in the procurement documents.
2. The Project Team shall submit its recommendations on the results of the bid evaluation, including a list of bids that passed the minimum evaluation threshold, to the Ministry and the Concerned Federal Entity for their approval.
3. The Project Team, whenever it deems it in the project's interest and in coordination with the Ministry and the Concerned Federal Entity, may decide to request additional clarifications after bid submission - including, but not limited to - requesting bidders to submit their "best and final offer".
4. If the Project Team is unable to agree on the project terms and the Project Agreement with the best bidder according to the evaluation

results, the Project Team has the right to stop discussions with the best bidder and move on to negotiate the project terms and the Project Agreement with the subsequent bidders in descending order on the list of bids that received the best evaluation.

Article (18)

Cancellation or Modification of Procurement Procedures or Project

1. The Concerned Federal Entity, in coordination with the Ministry, may cancel or modify the procurement procedures or the project at any time before awarding the project.
2. No party that has submitted a bid for a partnership project has the right to claim compensation for the cancellation or modification of the procurement or the project.

Article (19)

Announcement of Bid Award

The Concerned Federal Entity shall notify the winning bidder of the bid award and inform the other bidders of the bid award result.

Article (20)

Grievance on Bid Procurement Procedures

1. A private sector bidder for any project may, within a maximum of (10) ten days from the date of the bid award, submit a grievance request to the Ministry in the following cases:
 - a. Violation of the procurement documents or procedures of the provisions of the Law, the Partnership Projects Manual, or other relevant laws.
 - b. Violation of the partner selection procedures of the provisions of the Law, the Partnership Projects Manual, or other relevant laws in a manner that affects transparency and fair competition among bidders.

- c. Proven bribery, illegal commissions, bid rigging, fraud, or abuse of power with the aim of unlawfully influencing the procurement procedures to the extent that these actions have an actual impact on the bid award results, without prejudice to the provisions of any other relevant law.
2. A Grievance Committee shall be established by a decision of the Minister to consider grievances submitted related to procurement procedures. The Partnership Projects Manual shall specify the mechanism, procedures, and timelines for grievances.
3. The grievance request must be based on one of the reasons mentioned in Clause (1) of this Article and must include an explanation of the direct impact of those reasons on weakening the chance of winning the bid or being the direct cause of losing the bid if the award is completed, with all supporting documents attached to the request.
4. The Grievance Committee may suspend the procurement procedures until the request is decided upon if it finds the request worthy of consideration and that continuing the procedures would significantly weaken the applicant's chances of winning the bid.
5. If the Grievance Committee finds the reasons for the grievance to be valid, it shall issue its recommendations to either correct the wrongful procedure, disqualify one of the bidders, take any other measures, or reject the grievance for lack of valid reasons, and shall submit its recommendations to the Minister for approval before any action is taken.

Article (21)

Project Agreement

1. The Project Team shall prepare the Project Agreement in coordination with the Ministry and the Concerned Federal Entity in accordance with the provisions of this Law and the Partnership Projects Manual.
2. The Partnership Projects Manual shall specify the provisions that must be included in the Project Agreement, including but not limited to, provisions related to changes in laws, changes in economic conditions due to unforeseen circumstances at the time of

- contracting, amendment of the Project Agreement, and termination provisions and the compensation resulting from termination.
3. The Project Agreement may include a statement of the financial revenues available to the private sector in accordance with one of the following methods:
 - a. Payments made in exchange for providing the project or service.
 - b. Granting the Partner the right to collect and retain revenues from the use of an asset or service or to share in the revenue generated from such use.
 - c. A combination of the two methods referred to in paragraphs (a) and (b) of Clause (3) of this Article.
 - d. Any other method agreed upon.
 4. The Project Agreement may oblige the Partner to hire national labor or local contractors and to use local materials, equipment, and goods. Any such requirements must be explicitly disclosed in the procurement documents.
 5. After the grievance period has passed or has been decided upon in accordance with Article (20) of this Law, the Project Agreement shall be signed in Arabic - or English if required - by the Concerned Federal Entity and the Partner to whom the bid was awarded.
 6. The laws in force in the State shall apply to the Project Agreement.

Article (22)

Distressed Projects

1. The Concerned Federal Entity shall step in for the Partner and take over the partnership project to ensure its continued implementation whenever the Partner defaults in implementing the project and such default causes harm to the public interest, an interruption in public facility services, or a suspension of the public service whose continuation is required by the public interest, without prejudice to the right of the federal entity to claim any compensation for damages resulting from the default in project implementation.
2. The Partnership Projects Manual shall specify the provisions for distressed projects.

Article (23)

Mortgage

1. The Partner may - after obtaining the approval of the Concerned Federal Entity - mortgage any of its following assets and rights related to the project as security for financing obtained to implement the project:
 - a. Mortgage of the fixed and movable rights owned by the Partner or its rights in the assets of the partnership project or the Project Company.
 - b. Mortgage of the right of the Partner or the Project Company, if owned in its name and for its account, in the revenues and payments resulting from the use of the facility or service subject of the partnership project.
2. The Concerned Federal Entity must be a party to any agreement that gives the financing parties the right to step in for the Partner in the Project Agreement, and the Concerned Federal Entity may object to any of the financing entities.
3. The provisions regulating mortgages under the laws in force in the State shall apply to the mortgages referred to in this Article, unless the Project Agreement provides otherwise.

Article (24)

Incentives and Exemptions

Incentives may be granted to private sector partners in partnership projects to increase the attractiveness of the partnership project. The types of such incentives shall be determined by a decision of the Cabinet based on the recommendation of the Minister.

Article (25)

Supervision of Project Implementation

The Concerned Federal Entity shall be responsible for supervising the project implementation and managing the implementation phase in accordance with the provisions of the Project Agreement and the manuals

and templates issued by the Ministry. The Ministry's role in the implementation phase shall be limited to oversight and providing support to the Concerned Federal Entity when required.

Article (26)

Content of the Partnership Projects Manual

The Partnership Projects Manual shall specify the detailed provisions regulating partnership projects, in particular the following:

1. Governance and procedures for procuring partnership projects, including proposing projects, assessing value for money, market sounding, project structuring and management, procurement procedures, clarification request mechanisms, conferences, and project procurement criteria.
2. Special requirements related to the content of procurement documents and the Project Agreement.
3. Special requirements related to any deadlines and time frames to be followed for procurement procedures.
4. Special requirements related to the criteria for partner selection and bid evaluation, as well as the required qualifications for the Project Team.
5. Rules governing the request for a "best and final offer" and negotiation with the potential partner.
6. Disclosure requirements and the publication of essential information related to the procurement of partnership projects on websites and in the media.
7. Provisions regulating contract management and supervision of partnership projects during the implementation phase, and procedures for managing and executing the Project Agreement, including provisions for payment and the matrix of authorities determined by the federal entity.
8. Rules governing changes in control, the composition of partners, or the structure of the partner.
9. Rules governing force majeure and exceptional circumstances that may arise during project implementation.
10. Rules governing the termination of the Project Agreement and the compensation mechanism upon termination.

11. Rules governing the arrangement of mortgages on assets related to the project and any agreement that may grant financing entities the right to step in for the partner in implementing the project or to control or acquire it.
12. Any other provisions that the Law has referred to be regulated in the Partnership Projects Manual or that the Cabinet decides to add.

Article (27)

Transparency and Disclosure in Procurement Procedures

1. Procurement procedures shall be subject to the principles of transparency, free competition, and equal opportunity, and must be carried out in accordance with the rules and procedures stipulated in this Law and the Partnership Projects Manual.
2. To achieve the principle of transparency and equal opportunity, the Concerned Federal Entity shall publish the following information to the public:
 - a. A summary of all major decisions related to the approval of the partnership project and the procurement procedures.
 - b. The project award decision.

Article (28)

The Project Company

1. The Partner may establish a Project Company in accordance with the laws in force in the State to implement the project. The established company shall assume responsibility for complying with all terms of the Partnership Agreement. It may not be replaced, sold, or have its ownership transferred (directly or indirectly), nor may it contract with a third party without obtaining the prior approval of the Concerned Federal Entity through the same mechanism by which the original Partnership Agreement was approved.
2. A foreign investor from outside the State may own the entire Project Company in accordance with the Commercial Companies Law in force in the State, unless the procurement documents state otherwise.

Article (29)

Partnership Projects Information Center

The Ministry shall establish a data registry for partnership projects and an evaluation system for existing and implemented partnership projects. The Ministry may, when it deems appropriate, publish useful information to the public on its website.

Article (30)

Appointment of Advisors

1. The Ministry may appoint external advisors to provide assistance in the process of selecting, structuring, procuring, evaluating, and supervising partnership projects when necessary.
2. The Ministry may direct the Concerned Federal Entity or the Project Team to appoint external advisors when it sees this as an optimal use of external resources.

Article (31)

Dispute Resolution

The courts of the State shall have jurisdiction to hear disputes arising from the implementation of the Project Agreement. It may be agreed that disputes will be settled through alternative dispute resolution methods in force in the State, including mediation, arbitration, and recourse to an expert.

Article (32)

Amendment, Renewal, or Extension of Partnership Project Agreements

1. Partnership projects concluded before the entry into force of the provisions of this Law shall be subject to the provisions of their respective agreements and the laws applicable to them before the issuance of this Law.

2. Those agreements and their related licenses may not be amended, renewed, or extended except in accordance with the provisions of this Law, the Partnership Projects Manual, and the manuals and templates issued by the Ministry.

Article (33)

Repeals

1. Any provision that violates or contradicts the provisions of this Law is hereby repealed.
2. Cabinet Resolution No. (1/1) of 2017 on the Issuance of the Manual of Provisions and Procedures for Partnership Contracts between Federal Entities and the Private Sector and Cabinet Resolution No. (8/4) of 2019 on the Guidance Manual for Provisions and Procedures of Partnership between the Public and Private Sectors in the State shall remain in force until the issuance of the Partnership Projects Manual, to the extent that they do not contradict the provisions of this Law.
3. The provisions of federal legislation regulating procurement and warehouse management in the federal government shall not apply to partnership projects concluded in accordance with the provisions of this Law.

Article (34)

Publication and Entry into Force of the Law

This Law shall be published in the Official Gazette and shall enter into force on the day following the date of its publication.

Mohamed bin Zayed Al Nahyan

President of the United Arab Emirates

Issued by us at the Presidential Palace - Abu Dhabi:

Date: 13 / Jumada al-Awwal / 1445 H

Corresponding to: 27 / November / 2023 AD