

PPP's in Dubai: A Chance to Innovate!

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To which entities does the PPP Law apply?

The PPP Law regulates partnerships entered into between all government entities under the Dubai government's general budget, and private establishments and companies (the "private sector partner"). In accordance with the law, the private sector partner may be a corporate entity or a consortium of corporate entities.

Scope of the PPP Law

The PPP Law expressly excludes from its scope projects related to the production and supply of water and electricity. In addition, the Supreme Committee has the authority to issue resolutions from time to time excluding certain projects or sectors from the PPP Law.

Proposing projects

Pursuant to the PPP Law, either a government entity or a private company may propose partnership projects. The PPP law also offers some flexibility by allowing projects to bypass the public tender process. Where the idea of a project is specifically developed by a private company, the interested government entity may directly contract with the private company for the project without need of a public tender. In all other instances, however, private sector partners must participate in a public tender process.

Pre-conditions

Several preconditions apply under the new law. The private sector partner must form a limited liability project company (a special purpose vehicle ("SPV")) licensed to operate and implement the partnership contract in Dubai. Also, the project must be economically, financially, technically and socially feasible. In addition a PPP is not permitted where it will require the relevant government entity to make payments that have not been allocated for the project entity's budget.

Types of PPP models permitted

The PPP Law allows the parties to structure the project based on a range of PPP models, including, concession agreements, build-operate-transfer (BOT), build-own-operate-transfer (BOOT), build-transfer-operate (BTO), and manage and operate contracts. The Dubai Government's Financial Department and the government entity may also propose other arrangements to the Supreme Committee for approval such as maintenance agreements and expansion of existing projects. Once a model has been selected by a government entity and the Financial Department, the Dubai Government's Financial Audit Department will have oversight over the execution of the PPP project agreements.

Required Approvals and Role of Partnership Committee

The government entity must obtain approval from certain authorities in writing before entering into a PPP.

Depending on the value of the project, as well as the cost to the government entity, the approvals may be internal or external:

- If the PPP will result in financial income or savings to the government entity, then the director general, secretary general or chief executive officer (or a nominee) of the relevant government entity must approve the project.
- If the total costs to the government entity are up to AED 200,000,000, then the director general, secretary general or chief executive officer (or a nominee) of the government entity must approve the project.
- If the costs to the government entity are between AED 200,000,000 and AED 500,000,000, then the Financial Department must approve the project.
- If the cost of the project exceeds AED 500,000,000 then the Supreme Committee must approve the project.

The government entity must form an internal committee called the “Partnership Committee” whose members will be nominated in a resolution issued by the director general of the government entity. The resolution nominating the committee members will also specify procedures regarding how the Partnership Committee will meet and operate. If the project, in relation to which the Partnership Committee is formed, requires the government entity to incur costs exceeding AED 200,000,000, then the director general of the government entity must also nominate a representative from the Financial Control Department to sit on the committee.

Bidding Process

Once the government entity has obtained the necessary approvals for a project, it may invite prospective partners to bid for the project. The invitation to bid issued by the government entity must be accompanied by project details comprising financial, administrative and technical requirements that the partners must meet.

The government entity must also specify the conditions for tender participation as well as the securities and insurances required in connection with a bid submission.

The Project Agreement

The PPP Law stipulates certain basic provisions that must be included in the PPP project agreement to govern the relationship between the partners and list their obligations. The provisions that must be addressed include:

- the nature and scope of the works to be performed by the SPV
- intellectual property rights, title of project assets and transfer of title
- financing specifications
- financial and technical obligations of the parties
- determination of sale price or consideration related to project product or services as well as a mechanism to amend and determine price
- termination and amendment of the partnership contract
- allocation of risk
- environmental safety

The term for a PPP may not exceed 30 years, however the Supreme Committee may approve a longer term for public interest reasons.

Conclusion

The new PPP law seeks to encourage the private sector to be innovative and creative in identifying and funding projects for Dubai. If successful, this law may lay the foundation for reducing the financial burden

on the government to provide and maintain world class infrastructure in a rapidly growing international Emirate.