

**The Executive Regulation of the law regulating Partnerships with the Private Sector in  
Infrastructure Projects, Services and Public Utilities promulgated by Law no. 67 of the  
year 2010 Issued through Prime Ministerial Decree No. 238 for the year 2011**

**Part One: General Provisions**

**Chapter I**

**Definitions**

**Article (1):**

In application of the provisions of this Regulation, the following words and phrases shall have the meaning assigned to each of them unless otherwise indicated by the context:

*The Law:*

Law regulating the Partnerships with the Private Sector in Infrastructure Projects, Services and Public Utilities promulgated by Law no. 67 of the year 2010

*Supreme Committee:*

Supreme Committee for Public Private Partnership Affairs stipulated in Article (14) of the Law.

*The Unit:*

The Public Private Partnership Central Unit at the Ministry of Finance (PPPCU) stipulated in Article (16) of the Law.

*Administrative Authorities:*

Ministries, and General Authorities, whether Service or Economic related, and any other public juristic entities designated as such by virtue of a decree issued by the Prime Minister.

*Competent Authority:*

The competent Minister, the Chairman of the Authority, or the legal representative of public juristic entity.

*Private Sector:*

An Egyptian or foreign juristic entity in which the Egyptian state-owned shareholding is less than 20%, and a consortium between two or more Egyptian or foreign juristic entities in which the Egyptian state-owned shareholding is less than 20%.

*Investor:*

The private sector entity bidding to be awarded a PPP contract pursuant to the provisions of the Law and this Regulation.

*Qualified Investor:*

The investor who meets the project's qualification conditions and criteria as prescribed in details in the qualification document, and who shall have the right to compete to be awarded the PPP contract.

*Project Company:*

An Egyptian joint-stock company established by the successful bidder, the sole purpose of which shall be to execute the Public Private PPP Contracts.

*Public Private PPP Contract/ PPP contract:*

A contract concluded between the Administrative Authority and the Project Company whereby the Project Company is entrusted to undertake all or part of the activities stipulated in Article (2) of the Law.

*Private Advisory Contracts:*

Contracts concluded by the Unit, or after the approval of the Unit, by PPP satellite units within the administrative authorities established pursuant to Article (16) of the Law, with the transaction advisors who undertake the preparation of studies and documents relevant to the project.

*Operation:*

Management by the Project Company of the project, subject of the PPP contract, in relation to all financial, administrative, and technical aspects, and in respect of the supply of products, or provision of services to the Administrative Authority in relation to the project, in return for the remuneration agreed upon under the PPP contract, or according to the conditions and rules determined in the PPP contract.

*Utilization:*

Management by the Project Company of the project, subject of the PPP contract, in relation to all financial, administrative, and technical aspects, and in respect of the sale of products, or provision of services related to the project directly to the party the Administrative Authority specifies, in accordance with the conditions and provisions approved by the Supreme Committee for Public Private Partnership Affairs, and in accordance with the conditions and rules agreed upon in the PPP contract.

## **Chapter II**

### **General Provisions**

#### **Article (2):**

The Administrative Authority that desires to implement one or more of its projects incorporated in the Social and Economic Development Plan through Public Private Partnerships shall have to prepare a technical, environmental, social, economic, legal, and financial study under the supervision of the Unit to indicate the feasibility of executing the Partnership project according to the provisions of the Law.

This study shall include the rules and conditions that would secure the quality level of production and services, the quality of the executed utility assets and its maintenance, in a manner that secures its sustainability and durability and it shall remain in good condition during the period of execution of the PPP contract and after its expiry.

#### **Article (3):**

The study set forth in Article (2) of this Regulation shall be submitted, once completed, to the Competent Authority at the Administrative Authority for approval. In case of its approval to execute the project through a Public Private Partnership, the competent authority shall, after coordination with the Unit, refer the matter to the Supreme Committee. Attached to the approval request, the Unit shall include its recommendations about the project. The said request shall include all the project-related data, information and explanations and shall specify whether the Project Company to be contracted with shall Operate or Utilize the project; as well as duration of PPP contract execution.

The Supreme Committee may upon consideration of the study, request any additional explanations or data deemed necessary.

#### **Article (4):**

In case the Supreme Committee approves the execution of the project through a Public Private Partnership, both the Administrative Authority and the Unit shall be notified. The notice shall particularly include the duration of project execution and whether the Project Company shall Operate or Utilize the project, and any other data specified by the Supreme Committee. The Administrative Authority shall upon receipt of the approval notice proceed with the tendering, awarding, and PPP contract conclusion procedures in coordination with the Unit according to the provisions of the Law and this Regulation. The said Authority may delegate the Unit to undertake the tendering and awarding procedures.

#### **Article (5):**

The Administrative Authority shall, after the conclusion of the PPP contract with the Project Company, provide the competent regulatory agency or agencies with a copy of the PPP contract

and all its technical annexes to enable monitoring the Project Company during the construction, refurbishment of the project, and provision of products and services, subject of the contract. In addition, to insure that the legally-set quality levels have been met in accordance with the rules and conditions stipulated in the PPP contract.

**Article (6):**

Should the PPP contract include the entitlement of Operation or Utilization to the Project Company, the Administrative Authority shall thereupon form the committee stipulated in Article (5) of the Law to ensure that the product or the service is in compliance with the required level. The said committee shall be chaired by an employee from the Administrative Authority, at least with the level of a head of a central department; and membership of a number of its employees, one or more representative of the Administrative Authority, the Project Company, and the regulatory agency or agencies that shall regulate and control the utility and services, subject of the contract.

The Committee is entitled to seek the assistance of experts in performing its works. The Competent Authority, in agreement with the Project Company, shall issue a decree forming the Committee which shall have a technical secretariat appointed in the decree of its formation.

The Committee, to fulfill its duties, shall adopt all necessary actions and procedures to ensure compliance of the product or service with the required level, including sites' visits and random inspection at its discretion; request of necessary papers, information or data necessary to fulfill its functions.

The Project Company shall allow the Committee to visit any sites the latter determines, at the dates it sets and the Company shall provide all necessary facilities to enable the Committee to perform its duties.

In all cases, the Committee shall exercise its duties in a manner that shall not impede or disrupt operations in an unjustified manner.

The Committee shall convene at least once a month, upon the request of its chairman or the Competent Authority, if needed.

The validity of convention of the Committee is conditioned on the presence of at least three quarters of its members, and its decisions shall be issued by a majority of votes.

The Committee shall issue a monthly report on the results of its work submitted to the Competent Authority at the Administrative Authority. The Committee shall, if needed, submit an urgent report to the Competent Authority on any arising matters before the date of submission of the monthly report. A copy of the two reports shall be forwarded to the Project Company.

**Article (7):**

The Project Company shall present to the Administrative Authority the founders' agreements and any amendments thereto as well as the draft contracts to be concluded with third parties with the purpose of execution of works and services, subject of the PPP contract. This should take place within fifteen days utmost as of the date of conclusion of these agreements or its amendments,

and the date of preparation of the draft contracts. The Administrative Authority shall present the agreements and draft contracts to the Unit and shall implement its relevant recommendations.

The Administrative Authority has the right to request from the company to reconsider any of the articles of these draft contracts that are inconsistent either with the provisions of the Law, or this Regulation; or contradict with either the PPP contract or the purposes of its conclusion. Within sixty days, as of the date of submission of the draft contracts to the Administrative Authority, it is entitled to object to the conclusion of any of the draft contracts, if proven that any of the shareholders or the third parties that the Project Company intends to contract with had formerly declared bankruptcy; are subject to liquidation procedures; had been finally sentenced or the legal representative of juristic entities in immoral crimes; had been deleted from the suppliers' or contractors' records at the Administrative Authority; or there are national security considerations which necessitate such objection.

**Article (8):**

The Project Company shall abide with the objections received from the Administrative Authority concerning the conclusion of the execution contract of works and services, subject of the PPP contract referred to in Article (7) of this Regulation.

The PPP contract shall include an article on the compliance to these objections as mentioned in the previous paragraph.

**Part Two**  
**PPP Central Unit and Selection of the Transaction Advisor**

**Chapter I: PPP Central Unit**

**Article (9):**

The PPP Central Unit is a unit of special nature directly reporting to the Minister of Finance. The Unit shall undertake its competencies according to the provisions of the Law and this Regulation; and shall directly cooperate with the Administrative Authorities or the PPP satellite units, if any, with the purpose of the conclusion and execution of PPP contracts with the Private Sector.

**Article (10):**

The Unit shall have separate financial accounts and an independent accounting unit, under which the following is booked and recorded:

- a- Amounts allocated for the Unit, and the financial support it receives.
- b- Amounts received from the Project Company in return for the services the Unit provides as determined by the Supreme Committee.
- c- The financial return the Unit shall receive for the services it provides within its competencies, and the services rendered according to the provision of the last paragraph of Article (16) of the Law.

**Article (11):**

The organization structure of the Unit shall comprise a Director in the rank of head of sector; a deputy Director in the rank of head of central department; three central departments comprised of an appropriate number of general departments and departments. The Director of the Unit shall be under the direct supervision of the Minister of Finance.

The provisions of the Unit's employees' affairs and their organization structure are governed under the employment regulations decree issued by the Prime Minister specifying the employment system which includes remuneration packages, bonus and incentives system for the Unit's employees, The provisions of law on the state's civil servants system promulgated by Law no. 47/1978 shall apply where no special provision is incorporated in the Unit's employee Regulations provided that it is not inconsistent with such Regulation provisions.

## **Chapter II**

### **Selection of Transaction advisors**

**Article (12):**

Selection of the transaction advisors for the projects executed through the PPP shall be subject to principles of disclosure, transparency, equality, free competition, and equal opportunities.

**Article (13):**

Contracting with the transaction advisors to undertake the consultation works for one or more projects executed through PPP shall be through general or limited tenders according to the rules and procedures stated in the following articles hereunder.

In cases dictated by public interest considerations that do not bear the implementation of general or limited tender procedures, and after the approval of the Minister of Finance, the contract may be awarded through direct order.

**Article (14):**

Announcements of the general tenders stipulated in Article (13) of this Regulation shall be through Advertisement in local or international newspapers, or through any other means that guarantee publicity. Call for limited tenders shall be through acknowledged receipt registered mail and by e-mail, or through any other means that guarantee knowledge of invitation by relevant stakeholders and data included in it.

**Article (15):**

The Unit shall prepare classified data base for transaction advisors, calling for registration through a general invitation extended to Egyptian and foreign transaction advisors who meet the requirements of technical competence, good reputation, and international expertise in the field of PPP contracts according to their technical, financial, legal, environmental, social, or other specializations based on the project. The general invitation for registration in the abovementioned data base shall include the conditions for registration.

The main data of the transaction advisors, means of communication, and any other data required by the Unit shall be recorded in this data base.

Call for limited tenders for the transaction advisors registered in the data base, developed for this purpose at the Unit shall be, extended to a minimum of two advisors.

The data base shall be reviewed and updated every three years, and whenever necessary.

**Article (16):**

The tendering procedures for selection of transaction advisors may include dates at which the Unit shall receive and reply to the competitors' queries, provided that such reply shall be available to all competitors. The Unit is entitled to invite competitors to individual meetings considering principals of transparency and equality.

**Article (17):**

The tendering process for the selection of transaction advisors shall be according to detailed and adequate technical basis as well as appropriate for the nature of contracting.

The transaction advisors selection tender document shall be prepared by a committee comprised from the Unit's staff and formed by a decision issued by the Unit Director in either Arabic or English, or both languages, as the case may be. The document has to specify the language the advisors shall use in their proposals and correspondences. In case of multiplicity of languages used, the tender document must specify the language that shall prevail in cases of contradiction between the said language and the other language.

This tender document shall particularly include the following data:

- a- Invitation letter addressed to the transaction advisors to present their technical and financial offers for the tender.
- b- Determination of the sector of the project intended to be executed through PPP.
- c- Obligations of the transaction advisors as of contracting and until the completion of their scope of work in the project.
- d- Scope of work of the transaction advisors, and the governing conditions identifying the duration set for the project works.
- e- Minimum number required for the transaction advisors' working team, their educational qualifications, core expertise, and past experiences.
- f- financial forms and documents the competing transaction advisors shall fill as part of their financial offers.
- g- number of projects to be executed with the transaction advisors.
- h- Tendering procedures, dates of receipt of and reply to queries, and the final date for receipt of offers.

**Article (18):**

The financial forms set forth in Article 17.f of this regulation shall include the following:

- a- Total fees of the project's transaction advisors according to the system of work, terms of reference, and the duration of work in the project.
- b- table setting out the works and documents required from the transaction advisor, dates of submission, and the fees for the completion of these works and submission of documents.
- c- Ceiling for the recovery of the transaction advisor's travel and transport expenses necessary for the execution of consultation works for the project, if necessary.
- d- Other requirements related to the nature of the advisor's role, and nature of the project as provided in the transaction advisor selection tender document.

**Article (19):**

Prices in the financial offers should be clarified in numbers and letters, and in the case of any discrepancy, the prices stated in letters shall prevail. Any scratch, omission or correction shall not be considered unless it is signed and stamped by the transaction advisor.

**Article (20):**

The receipt and selection of bids presented in limited and general tenders for selection of transaction advisors shall be through a committee of Unit employees formed by a decree issued by the Minister of Finance based on the nomination of Director of the Unit.

A member from the competent advisory department at the State Council commissioned by its head, as well as a representative of the Ministry of Finance shall be members of this Committee.

The Committee has the right to assign subcommittees, formed from its own members or others, to examine the technical and financial aspects in the submitted bids, and extent of its compliance with all the required conditions. The Committee is entitled to include as members in the subcommittees experts the said committee seeks their opinion. The subcommittees shall submit reports on the outcomes of their work and recommendations to the transaction advisor selection committee.

**Article (21):**

Transaction advisors offers shall be received on the time and place provided in the tender documents and according to the procedures set therein. The bids shall be submitted in two sealed envelopes; one for the technical offer and the other for the financial offer.

The foreign transaction advisors are entitled to place their prices in foreign currency, and shall be paid in the currency set in their financial offers, provided that the date of the conversion rate to Egyptian Pounds for evaluation purposes of the financial offers shall be set in the tender documents.

**Article (22):**

The bids submitted by transaction advisors shall be valid and binding during the period specified in the tender documents. The Unit may, before the date of opening the financial offer envelopes, extend the validity date to a period not exceeding sixty days and bidders are not entitled to object thereto.

**Article (23):**

The tender document for selection of transaction advisors shall specify evaluation method for selection. The committee for selection of transaction advisors shall receive and evaluate technical offers and select the technically accepted based on specifications set forth in the tender document

The decision of the Committee for selection of transaction advisors to render an offer disqualified shall be justified. The bidders shall be informed of the result of the technical evaluation via acknowledged receipt registered mail and by e-mail.

The Committee shall notify the technically accepted transaction advisors of the date of opening the financial envelopes to attend the session, if they so desire. The notice shall be through a registered letter with acknowledgement of receipt or any other means that shall secure their

knowledge of the session. The financial evaluation shall be only restricted to the technically accepted bids.

**Article (24):**

The Committee for selection of transaction advisors shall convene in the place and time set for opening the financial envelopes after validation of its safe sealing.

**Article (25):**

Awarding in case of technical evaluation according to the evaluation system (compliant/ noncompliant ) shall be for the technically accepted bids with the lowest value calculated based on the method specified in the tender document.

In case technical evaluation is based on the pointing system, the most economically feasible bid shall be awarded the project, after applying the relative weight for both technical and financial offers according to the method of calculating the financial value provided in the tender document and set in the following equation:

$$\begin{array}{l} \boxed{\begin{array}{l} \text{Total technical points of the bid under evaluation} \\ \hline \text{Total technical evaluation points} \end{array}} \times \text{relative weight of the technical offer} \\ + \\ \boxed{\begin{array}{l} \text{Financial value of the lowest bid accepted} \\ \hline \text{Financial value of bid under evaluation} \end{array}} \times \text{relative weight of the financial offer} \end{array}$$

The successful bid shall be the one rewarded the highest result in the abovementioned equation, after ranking of the equation value from highest to lowest.

**Part Three**  
**Tendering, Awarding, and Contracting Procedures**

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**Chapter I**  
**Section I**  
**General Provisions**

**Article (26):**

The Administrative Authority may not publish any advertisement for expression of interest; call for pre-qualification; prepare information memorandum, qualification documents, or tender documents; or call for submission of bids for award and contracting, except after the approval of the Unit. The Administrative Authority shall comply with the recommendations of the Unit.

The convention of any of the committees stipulated in the Law and this Regulation shall only be valid in the presence of one or more representative of the Unit.

**Article (27):**

The Unit shall create a special e-mail address for the correspondences related to the project tendered under PPP. The Unit shall manage this address and electronically forward a copy of the project correspondences to the Administrative Authority.

**Article (28):**

The Administrative Authority shall, prior to start on tendering procedures of the project to investors, prepare in coordination with transaction advisors, an information memorandum on the project, subject to tendering, within the limits approved by the Supreme Committee, in Arabic or English, or in both languages.

The memorandum shall include, in particular, the following:

- a- General description of the project inclusive of its technical and legal aspects, in addition to the services or products to be provided.
- b- The nature of investor's role in project execution.
- c- Services or facilities the Administrative Authority shall provide for project execution, if any.
- d- The core obligations incorporated in the PPP contract for project execution.

The information memorandum shall be submitted to the Unit and may not be published or made available to interested investors or pre-qualification applicants except after the Unit's approval. This approval shall indicate whether the nature of the project necessitates inviting investors to expression of interest or not.

## **Section II**

### **Invitation for Expression of Interest**

#### **Article (29):**

If the nature of the project necessitates inviting investors to express their interest, as a prior step prior to pre-qualification procedures, the Administrative Authority shall announce this at least in a widely circulated daily newspaper in both Arabic and English; and if needed, in a foreign newspaper or in a publication abroad; and on the electronic sites of the Administrative Authority, the Unit, and the General Authority for Investment (GAFI), all as set by the Unit.

#### **Article (30):**

The size of Expression of interest applications shall be studied by the Administrative Authority under the Unit's supervision. Based on the results of this study, the Administrative Authority shall after the approval of the Unit, announce the invitation for pre-qualification for the parties interested to compete for the project's execution.

## **Section III**

### **Pre-qualification Stage**

#### **Article (31):**

The Pre-qualification Committee formed by the Competent Authority at the Administrative Authority shall undertake the following functions according to Article (20) of the Law:

- a- Preparation of the pre-qualification document, setting of the relevant criteria, and listing of the required documents.
- b- Reply on the queries of the pre-qualification applicants; making replies available to all investors requesting qualification for the project.
- c- Receipt of the pre-qualification applications, and registration in the record developed for this purpose according to its date of submission.
- d- Examination of the pre-qualification applications, and verification of completion of all the required data and documents.
- e- Request of necessary data and documents from the pre-qualification applicants according to the qualification document.
- f- Study the submitted pre-qualification applications after submission; identifying the ones compliant with the set qualification criteria, and exclusion of the non-compliant.

#### **Article (32):**

The Administrative Authority shall, immediately after the Unit's approval of the information memorandum, the qualification document, and the draft of the invitation for qualification announcement, advertise the invitation for pre-qualification at least in a widely circulated daily newspaper in both Arabic and English; a foreign newspaper or in a publication abroad; and on

the electronic sites of the Administrative Authority, the Unit, and the General Authority for Investment (GAFI).

The advertisement shall include a brief statement about the nature, duration, postal address, and e-mail of the project, and the deadline for receipt of qualification applications.

The Administrative Authority shall upon receipt of any requests for qualification documents deliver a free copy of the information memorandum and the qualification documents to the qualification applicant or whoever represents it; or send an electronic copy to its e-mail.

**Article (33):**

The investors interested in competing for project execution shall apply for the pre-qualification stage as individual investor or in the form of a consortium of more than one investor. In case an application is submitted by a consortium, a representative shall be chosen to undertake, by virtue of official powers of attorney from the consortium members, their representation in all the pre-qualification procedures, and competition for the project award.

**Article (34):**

The Pre-qualification Committee shall convene at the headquarters of the Administrative Authority or any other location determined by the Competent Authority in the presence of the transaction advisors' representatives. The Committee shall meet upon the invitation of its chairman or the Competent Authority.

The validity of convention of such committee is conditioned on the attendance of three quarters of the members at least; the technical, financial, and legal expertise shall be represented in the meeting in addition to the Unit's representatives. The committee shall issue its decision with respect to the pre-qualification applications by the majority of votes and shall be approved by the Competent Authority.

**Article (35):**

The Pre-qualification Committee shall have a technical secretariat as set forth in the decree issued concerning the formation of the Committee. The Secretariat shall take minutes and undertake the related administrative secretarial work.

**Article (36):**

The Pre-qualification Committee may request from the applicants the explanations and documents it sees necessary to study the submitted qualification applications. The Committee's request shall set a deadline for reply. The queries of the pre-qualification applicants shall be received through the project's e-mail.

The Committee may also summon a representative of the applicant to present the request or the requested explanations without prejudice to equality and equal opportunities among the different qualification applicants.

**Article (37):**

The Administrative Authority shall inform the qualification applicants of the list of qualified investors by virtue of acknowledged receipt registered mail and by e-mail. The list shall be announced on the web site of both the Administrative Authority and the Unit.

The decision of the Pre-qualification Committee to disqualify the non-compliant applicants shall be justified. The Administrative Authority shall, after the approval of this decision by the Competent Authority, notify the disqualified applicant of the decision by acknowledged receipt registered mail, or by e-mail, or any other means that shall guarantee knowledge of the decision.

**Article (38):**

The investor whose prequalification application has been rejected is entitled to object to this through a justified memorandum submitted to the Unit within a week from the date of receipt of the notification of rejection decision or his/her knowledge of such decision.

The Unit shall prepare a ledger to record these objections by date of submission. The objecting party shall receive a receipt of the objection submitted.

**Article (39):**

The Unit shall study the objection made by the qualification applicant, and shall decide upon it within fifteen days from the date of receipt of the objection. The Unit is entitled to discuss the matter with the Qualification Committee and request original documents, if required.

**Article (40):**

The Unit shall notify the objecting party with its decision by acknowledged receipt registered mail or by e-mail, or by any other means that guarantees knowledge of the objecting party of the Unit's decision. The Administrative Authority shall receive a copy of such decision.

**Article (41):**

The decision of the Unit on the objection shall be final and binding.

**Section IV**  
**Preparation of tender document**  
**And bids submission**

**Article (42):**

The Competent Authority shall issue a decree forming a committee composed of technical, financial and legal members to be in charge of the preparation of the tender document pertinent to the project, in light of the decision taken by the Supreme Committee and the Cabinet, as the case may be, provided that the Unit is represented in this Committee by one or more members.

After the Unit's approval, the tender document shall be prepared in Arabic or English or both, and the language in which bidders shall submit their tenders and address their correspondence needs to be defined. In case of using multiple languages, tender document must specify the language which shall prevail in case there is a contradiction between that language and the other.

**Article (43):**

The project tender document should include the following information in particular:

- a. General information related to the project, required for the bids preparation and submission.
- b. Project specifications as well as technical and financial conditions that need to be in both the technical and financial offers.
- c. Specifications of the final product, the service level, performance indicators, principal requirements of the Administrative Authority and of the regulatory and monitoring bodies for the utilities and services subject to contracting of Safety and security criteria, environment protection and others
- d. Without prejudice to the provisions of Article (34) of the Law, the primary heads of terms of the PPP contract, and other complementary agreements, , emphasizing non-negotiable conditions.
- e. Defining methods and basis for comparison between bids. In case of applying a pointing system for evaluation , stating the evaluation criteria of bids, the principles of drawing financial and technical comparisons between them, the points corresponding to each criterion and the way they are applied in evaluation, in addition to the relative weight assigned to each of the financial and technical aspects.
- f. Documents, forms and deadlines that have to be observed and met in the bid.
- g. Validity period of bids.
- h. Value of the bid bond, method of calculating performance bond according to the nature of project, its stages of execution and its validity.

**Article (44):**

The Unit shall launch an electronic website for the project in coordination with the Administrative Authority to include all information and studies conducted related to the project as well as the tender documents. Access to this page shall be via a login username and password provided by the Unit to qualified investors.

**Article (45):**

In coordination with the Administrative Authority, the Unit shall set a price for the project's tender document based on a percentage of the estimated costs of preparing all project related documents which should not exceed 25% of these costs.

The committee which is competent to prepare the project's tender document shall issue an invitation letter to all qualified investors to submit their bids for the execution of the project, and attach to this letter the final draft of tender document, its price, draft PPP Contract and its annexes, which shall all be submitted to the Competent Authority for authorization, after approval of the Unit.

**Article (46):**

Upon approval of the tender document by the Competent Authority at the Administrative Authority , the Unit shall make certified copies of such document stamped with its own stamp and that of the Administrative Authority and with a sufficient number of copies for qualified investors, keep one copy and two kept with the Administrative Authority.

**Article (47):**

The Administrative Authority shall address the invitation letter referred to in the second paragraph of Article 45 of this Regulation to qualified investors, by acknowledged receipt registered mail, and by e-mail, requesting them to withdraw the tender document from the Unit, and settle its price. The Unit shall issue to qualified investors certified and stamped payment receipts for the tender document.

**Article (48):**

Only bids submitted by qualified investors who withdrew the tender document and paid its price shall be accepted. The Unit shall inform the Administrative Authority with the list of all qualified investors who withdrew and paid for the tender document and paid its price.

**Article (49):**

The Administrative Authority jointly with the Unit may set a date in the tender procedure in which investors are allowed to send their inquiries and receive replies thereto, provided that all inquiries and its responses be available to all qualified investors.

**Article (50):**

Following the invitation and prior to bids' submission the Administrative Authority along with the Unit may invite qualified investors to meetings to discuss their inquiries on the project documents.

**Article (51):**

A committee shall be formed by a decree from the Competent Authority at the Administrative Authority, mandated to set an estimated value for the project constituted from both financial and technical experts taking into account the following elements:

1. The estimated value of the project is to be computed on the basis that the Administrative Authority will be executing the project;
2. The project value has to include its total investment costs plus total operation and maintenance costs over the contract validity period at market prices prevailing at the time of computing the estimated value;
3. The project estimated value does not include financing burdens or inflation rates.

The above mentioned committee referred to in the first paragraph of this article shall dispatch to the Unit in a sealed envelope stamped by the Administrative Authority, signed by its members and transaction advisors a report on its works including a statement of the estimated value and principles followed by the committee in setting the estimated value of the project, its investment costs and operational and maintenance costs.

The Unit shall review the said report and may ask the committee to provide further explanation, or further discuss its contents, and it may send it back to the committee to consider its recommendations in this regard.

**Article (52):**

After reviewing the estimated project value, the Unit shall coordinate with the financial transaction advisor the status of the *public sector comparator* stated in Article (25) of the Law, considering the following rules:

- a. The financing costs and burdens of the project shall be added according to the suggested financing structure.
- b. Analyze all risks associated with the project particularly of financial, technical and legal nature, and each estimated and added to the estimated value of the project.
- c. Price variances from date of preparing the estimated project value until the deadline of bid submission, should be taken into account by applying the inflation rate for this period.
- d. Adding any further burdens to be borne by the bidder in addition to the above and are important for the project execution.
- e. Calculation of the tax revenues paid by the project company.

- f. Expected annual inflation rates over the period of the project duration and applicable discount rate in order to reach the net present value of the project.

The Unit, after submission of financial and technical bids shall present a report on the *public sector comparator* to the Supreme Committee for approval. This report shall be placed in sealed envelope, signed and stamped by the Director of the Unit, and shall not be unfolded until the opening of financial envelopes for the technically accepted bids.

**Article (53):**

Before the deadline of bid submission, the Administrative Authority, in agreement with the Unit, may introduce some amendments to the tender document, provided that a sufficient time is given to qualified investors to consider such amendments in their bids. These amendments shall be issued in an annex signed by the chairman of the committee responsible for tender document preparation after being reviewed by the committee, stamped by the Unit and the Administrative Authority and approved by the Competent Authority.

**Article (54):**

In case the Administrative Authority amends the tender document, it should contact the qualified investors who purchased the document by a acknowledged receipt registered mail and by e-mail in order to receive a free copy of the amendments annex.

**Article (55):**

The qualified investor or his legal representative shall prepare one original copy of both the technical and financial offers; every page shall be initialed by the investor or its legal representative, and stamped by the qualified investor. Full signatures should be affixed to the other pages that require signing by investor or its legal representative.

A qualified investor is required to submit the exact number of copies stated in the tender document of technical and financial offers, to be signed and stamped as referred to in the previous paragraph.

**Article (56):**

The technical offer envelope has to include the bid bond specified in the tender document and all the necessary technical documents that outline in detail the project specifications required to realize the level of service or final product envisaged by the project.

The bid bond should be in the form of a non-conditional, irreversible letter of guarantee issued by the bidder to the Administrative Authority from an Egyptian bank or a branch of a foreign bank registered at the Central Bank of Egypt, provided that the validity of this letter of guarantee may not be less than ninety days at least following the period defined for the validity of the bid or any amendment that takes place thereof.

The bank shall acknowledge in the issued letter of guarantee its commitment to pay to the Administrative Authority an amount equal to the value of bid bond in full at the first claim made by the Administration Authority, and without attention to any objection from the bidder.

**Article (57):**

The financial offer envelope should include the forms and financial documents stated in the tender document.

Prices specified in the financial bids should be clarified in both numbers and letters, and in case of any discrepancy between the prices stated in letters and the one in numbers, the former shall prevail. Any scratch, omission or correction shall not be considered unless it is signed and stamped by the qualified investor or its legal representative.

**Article (58):**

The envelopes of the financial and technical offers should be tightly sealed and bear the names of the bidder, the Administrative Authority presented to, the project information and a specification as to whether this envelope is the financial or the technical, or whether original document or a copy, as well as the date of envelope opening session.

**Article (59):**

Bids should be hand delivered , in the place and date defined in the tender document, in two separately sealed envelopes; one for the technical offer and the other for the financial one. These bids should be handed over to the committee for receipt and study of bids stipulated in Article (29) of the Law. Bids should be numbered by the committee and recorded in the bids' receipt report which has to include the status of every bid. Bidders should obtain a receipt from the committee upon the submission of their bids.

Bids should be retained in a safe place as specified by the committee at the Administrative Authority that guarantees the safekeeping of these bids.

**Article (60):**

Bidders may not withdraw their bids once delivered to the committee for receipt and study of bids.

No allegation shall be accepted by any bidder claiming the existence of a mistake in its bid if deadline of submission of such bids has already lapsed.

**Article (61):**

A bidder, or its legal representatives by virtue of a power of attorney, signature on which is certified by a bank and delivered to the committee for receipt and study of bids, may appoint a

delegated representative during the envelope opening session of the technical and financial bids, to represent the bidder in the tender and award procedures at the Administrative Authority. Delegate of the bidder shall remain assigned to monitoring such works and procedures before the Administrative Authority, as long as the bidder did not notify the Authority of any change to the representative using the very same tool.

In all cases, bidders should notify in writing the Administrative Authority with its authorized stamp.

**Article (62):**

Bids submitted by qualified investors shall be deemed valid and binding to its issuers throughout the period specified in the tender document.

If necessary and after the approval of the Unit, the Administrative Authority prior to opening of financial envelopes, may request an extension of the bids validity for a period of no more than ninety days after the expiry of the validity of the bids period specified in the tender document, as long as bidders do not have any objection to this extension.

**Section V**

**The competitive dialogue**

**Article (63):**

The Competent Authority pursuant to the approval of the Unit, and subsequent to the approval of the Supreme Committee, is entitled to tender the project on two phases, and conduct as phase one, a competitive dialogue with the purpose of obtaining the necessary clarifications on the elements of technical and financial offers in this phase. As phase two, final bids are to be submitted .

**Article (64):**

In the cases where the decision is made to tender the project on two phases, the committee in charge of preparing the project tender document, formed by virtue of Article (42) of this Regulation, shall prepare the tender document in phase one, which has to include:

- a. General information on the project and its specifications,
- b. Specifications of the final product, service level and performance indicators,
- c. Heads of terms of the PPP contract,
- d. Technical and financial evaluation system in general,
- e. Requirements, forms and documents requested in each of the nonbinding technical and financial offers which give a general outline of both offers,
- f. Means of submission of the nonbinding technical and financial offers,
- g. Tender procedures on two phases, dates of submission of inquiries and its replies thereto, final deadline for submission of the nonbinding technical and financial offers, initial

dates for holding the competitive dialogue with bidders, and issuance of final tender document.

**Article (65):**

Having secured the Unit's approval on the tender document in phase one, the Administrative Authority must issue this document and make it available to bidders on the project's website as stipulated in Article (44) of this Regulation. The Administrative Authority shall notify bidders by acknowledged receipt registered mail and by e-mail with the date of uploading this document to the web site, allocating to every bidder a password to allow access to the project website and review of the tender document content.

**Article (66):**

In coordination with the Unit , the Administrative Authority shall receive and respond to the queries sent by bidders via e-mail on the date specified for this purpose.

**Article (67)**

By virtue of a decree issued by the Minister of Finance and upon the Unit's recommendations, a committee chaired by the Director of the Unit shall be formed to manage the competitive dialogue, including a representative of the Administrative Authority. Such committee will include among its members representatives from the Unit and the transaction advisors selected by the Director of the Unit to attend the competitive dialogue meetings.

This Committee is competent to receive the nonbinding bids on its due date and bidders will be given a proof of submitting their offers. The Committee shall number and record such bids in a bids' receipt report, and later study its content.

The Unit shall notify each party who submitted a nonbinding bid both by acknowledged receipt registered mail and by e-mail with the date, venue and duration of the competitive dialogue sessions.

**Article (68):**

Competitive dialogue meetings shall be held separately with nonbinding bids submitters, in a framework that ensures equality among them in terms of number and duration of these meetings. All Competitive dialogue committee members attending these meetings have to abide by rules of confidentiality with regards to the discussions taking place, or information shared, and they have to sign a commitment to that sense.

The competitive dialogue committee should submit a report on the minute these meetings, to the Supreme Committee. Members attending those meetings are not permitted to carry with them any means of communication during these sessions

**Article (69):**

Tender document preparation committee shall prepare the final version of the tender document, to be issued in phase two, observing the provisions stated under Articles (43 to 62) of this Regulation.

## **Chapter II**

### **Awarding and Contracting Procedures**

#### **Article (70):**

Upon opening of envelopes of submitted technical offers as well as financial envelopes of technically accepted offers, the chairman of the committee for receipt and study of bids stipulated in article (29) of the Law shall assign one or more committee members to unfold the contents of technical and financial bids, in the least time possible, in lists designed for that purpose including a listing of all the main documents of each bid, number of pages, and all relevant remarks which will be recorded in the committee minutes of meeting and signed by all committee members.

#### **Article (71):**

All the works undertaken by the committee for receipt and study of bids must be documented in a specially designed minutes of meeting report, and it may set up some further subcommittees whether from its own members or other experts, main functions of which are to review all technical, financial and legal aspects of the submitted bids and to report the outcomes of their work and recommendations back to the committee for receipt and study of bids, which in turn shall consider. The committee is required to finalize its work and draft the letter of award prior to the expiration of bids.

#### **Article (72):**

The committee for receipt and study of bids is requested to ensure the compatibility between the submitted technical offers with the specifications and requirements outlined in the tender document and shall be in charge evaluating bids according to the parameters stated in the tender document.

The committee for receipt and study of bids may, after opening of technical and financial envelopes, request further explanations and responses to certain inquiries from bidders, as deemed necessary.

#### **Article (73):**

In cases of disagreement that may arise among the committee for receipt and study of bids members with regards to accepting or rejecting any technical bid, it shall be recorded in the minutes of the committee meeting, after seeking the opinion of the competent transaction advisor and documenting such opinion in the minutes report.

In all cases, the committee shall submit a recommendations report signed by all of its members to the Competent Authority, for its appropriate decision.

**Article (74):**

Bids that are not in conformity with the specifications and conditions , set forth in the tender document and the evaluation criteria, have to be excluded, and the exclusion is made by virtue of a decision made by the Competent Authority at the Administrative Authority based on the recommendations of the committee for receipt and study of bids.

The decision to exclude a certain bid should be justified and stated in thorough detail, and relayed to the bidders of the technically disqualified bids to their addresses stated in their bids by acknowledged receipt registered mail and by e-mail.

Bidders whose bids were disqualified technically are entitled to appeal before the Petition Committee, stipulated in Article (39) of the Law within thirty days from the date of receiving the exclusion notice.

Financial envelopes of technically accepted bids are not permitted to be opened except after the resolution of all cases of appeal on technical exclusions.

**Article (75):**

Financial evaluation shall be confined to technically accepted bids and committee for receipt and study of bids shall notify bidders whose technical bids are accepted, by acknowledged receipt registered mail and by e-mail, with the date of the financial envelopes opening session to attend the work of the committee.

**Article (76):**

The committee for receipt and study of bids shall convene at the time and venue set for opening the financial envelopes, and shall commence its work by ensuring that envelopes are tightly sealed, and that all bidders or their representatives are present, then it should open the envelopes in the order of their numbering. Chairman of the Committee shall announce the values of each bid, on which the financial evaluation will be based. All committee members as well as attending bidders or its representatives shall sign on the minutes' report of the session.

**Article (77):**

In the case of pursuing the evaluation system (compliant – non compliant),the lowest bid in terms of its present value shall be awarded, according to the calculation method set forth in the tender document. In case of evaluation by pointing system, the most economically feasible bid shall be awarded after implementing the relative weight to each of the technical and financial offers, according to the value calculation approach as defined in the tender document, as per the following equation:

Total technical points for tender under evaluation ----- X relative weight of technical offer Total technical evaluation points
---

+

Net present value of least acceptable offer ----- X relative weight of financial offer Net present value of bid under evaluation
--

Hence, the successful bidder receives the highest score, after ranking bids from the highest down to lowest.

**Article (78):**

Successful bidder shall be notified by means of a letter of award sent thereto by acknowledged receipt registered mail, after the acknowledgment of the Supreme Committee to the recommendation of the Competent Authority for the selection of the successful bidder and approving concluding the contract.

The Administrative Authority shall then return the bid bond to bidders whose technical bids were rejected at first claim after the date of announcing the opening of financial envelopes session. It shall also return the bid bond to the unsuccessful bidders at first claim on the day following the expiry of bids or the day following signing the PPP contract with the Project Company which was established by the successful bidder, whichever date is earlier.

**Article (79):**

No return of the bid bond shall take place if a bidder withdraws its bid after submission to the Administrative Authority, or if the successful bidder failed to present the performance bond on the date stated in the letter of award of the PPP contract. In this case, the transaction may be awarded to the bidder next in ranking, or tendering is cancelled after coordinating with the Unit; this without any prejudice to the Administrative Authority's entitlement to claim compensation from the successful bidder.

**Article (80):**

Tender procedures shall be cancelled if the project is irrevocably dispensed with, or if public interest so necessitates, and the cancellation is upon a decree issued by the Competent Authority after consulting with the Unit, and the approval of the Supreme Committee.

**Article (81):**

Tender procedures may be cancelled in the following cases:

- a. If a single bid is submitted, or after all others are excluded one only remains.
- b. If all or majority of bids are conditioned or not in conformity with the conditions and specifications or were unlikely to be financially evaluated.
- c. If the value of the lowest bid unjustifiably exceeds the public sector comparator authorized by the Supreme Committee.

With the exception of the above, a single bid may be accepted by a decision from the Competent Authority based on the recommendation of the committee for receipt and study of bids, after the approval of the Supreme Committee, if the following conditions were met:

- a. Public interest does not allow for re-tendering procedures, or that repeating it shall be futile.
- b. In a single bid case, it is accepted technically and is in accordance with the specifications and conditions.

It is also permissible, after the consent of the Supreme Committee, to accept the lowest bid which value exceeds that of the public sector comparator with no more than 20% (twenty percent) from the value of said comparator, and when public interest so necessitates.

Cancellation should be by virtue of a decree issued by the Competent Authority based on the committee for receipt and study of bids recommendation, and after a prior consent of the Supreme Committee to the request made by the Administrative Authority for the cancellation of tender procedures.

**Article (82):**

In all cases of cancellation, mandatory and permissible, the decision of cancellation has to be justified, and the Administrative Authority has to notify bidders at their addresses stated in their bids with its decision concerning tender procedures cancellation by acknowledged receipt registered mail and by e-mail within one week from the date of issue thereof.

**Article (83):**

No bidder is allowed to claim any compensation for the cancellation decision, with the exception a compensation of 10% from the actual expenses incurred by the bidder for the preparation of its bid with a cap of five hundred thousand Egyptian pounds.

These compensation amounts shall be payable by the Administrative Authority from its budget within three months utmost, from the date of filing a request at the said Authority by the bidder or its legal representative, by virtue of a power of attorney to receive payment.

**Article (84):**

The successful bidder shall establish a company, called “the Project Company” with the following conditions:

- a. Company shall be an Egyptian joint stock company established pursuant to the provisions of the Egyptian law.
- b. Sole purpose shall be to execute the contracted project, according to the rules, conditions and regulations stipulated in the tender document, the Law and this Regulation.
- c. The establishment contract and by-laws of this company do not conflict with the provisions of the PPP contract and its other complementary agreements.
- d. Period of existence of this Project Company is not less than the period required for the execution of the PPP contract, as stated in the tender document.
- e. Percentages of Shareholding should not violate pre qualification criteria or provisions of PPP Contract.
- f. Founders of the company and its board members should be well-reputed for fidelity and goodwill, and their record free from any ruling or sentence related to honor or integrity, nor was a previous bankruptcy case passed against them.

**Article (85):**

The Project Company is not permitted to execute any other PPP Contract unless with a prior written approval from the Administrative Authority, following the consent of both the Unit and the Supreme Committee, and provided that its original establishment contract is only restricted to service provision.

Whereas for any other PPP Contracts no permission should be awarded to the Project Company to execute other PPP Contracts, until after the final execution of the project for which the company was established.

**Article (86):**

The performance bond which the successful bidder is committed to submit should be in the form of an unconditional irrevocable Letter of Guarantee in favor of the Administrative Authority, and issued by a bank listed with the Central Bank of Egypt, in case required to, prior to the date set in the letter of award expires.

**Article (87):**

Principles of determining the performance bond, if required to be submitted, should be as follows:

- a. A defined amount set in both the tender document and the PPP Contract, to be submitted before the lapse of the deadline specified in the letter of award, and shall remain valid until the effective date of the PPP contract. In case of extending the effective date, the Letter of Guarantee validity date shall be in turn extended to that very same date, and this guarantee shall not be released until the Administrative Authority receives the performance bond for the first year of executing the construction or refurbishment works.
- b. During the period of executing the construction or refurbishment works, the value of the annual performance bond is based on a percentage of the annual value of the construction or refurbishment works set in the tender document and PPP Contract and outlined in the financial offer of the successful bidder.
- c. During the period of services provision, or operation and maintenance works the value of the annual performance bond, in based on a percentage of the annual value of service availability payment for these services or payment against operation and maintenance works set in the tender document and PPP contract and outlined in the financial offer of the successful bidder.

The performance bond stipulated under item (b) of this Article shall remain in effect for a period of one year at least, and shall be renewed or replaced annually by the value set in the tender document and the PPP Contract, two weeks at least prior to its expiry. The extension of the performance bond till the last year of executing the construction or refurbishment works must be observed till the issuance of the acceptance certificate stipulated in Article (2) of the Law. The performance bond is not permitted to be released until after the issuance of the acceptance and receipt of the performance bond for the first year of services provision or operation and maintenance works.

The Performance bond set forth under item ( c ) of the first paragraph of this Article shall be valid for at least one year, and renewed or replaced annually, by the value set in the PPP Contract, by an enough time before its expiry as pursuant to the conditions set in the PPP Contract and until its expiry date.

**Article (88):**

The Administrative Authority may take no action with regards to the performance bond except after the Unit's approval and notification to the Project Company by acknowledged receipt registered mail and by e-mail.

## **Part Four**

### **Examination and settlement procedures of appeals Submitted to Petition Committee**

#### **Article (89):**

The Petition Committee is mandated to study the investors' appeals and all related matters pertaining to the tendering process, award and execution of PPP contracts, as stipulated in Article (39) of the Law. If the subject matter of such a petition is an administrative decision, it shall then be submitted to the Committee for review within thirty days from the date of notification received by the stakeholder thereon, or his/her knowledge of the decision. No lawsuit for cancellation of such a decision shall be accepted before it is appealed.

#### **Article (90):**

The Petition Committee as stipulated in Article (39) of the Law shall hold its sessions for the purpose of examining petitions filed therewith, whenever the need arises, and upon the invitation of its chairman. Proceedings of this committee, decisions taken, and the reasons it was based on shall be recorded in a minutes' report.

#### **Article (91):**

An office shall be established within the Unit to undertake receipt of petitions as stipulated in Article (89) of this Regulation, and record them in a dedicated register on the date of its receipt. It shall also undertake the function of a technical secretariat of the Petition committee as stipulated in Article (95) of this Regulation.

The petition has to be drafted in Arabic, signed by the stakeholder or his/her legal representative, produced in one authentic and 6 copy, and shall incorporate the relevant information and the following attached :

- a. Name of appellant, title, profession and domicile,
- b. Date of notification of appealed procedure, action, or decision or date of knowledge thereof, as the case may be,
- c. Subject matter of the petition, and reasons on which it is based,
- d. The petition supporting documents.

The office is mandated to provide the appellant with a proof of receipt of his/her appeal, with name, title of appellant, date and time of receipt, and name of related project.

**Article (92):**

Upon receipt of the petition, the office must promptly submit it to the chairman of the Petition Committee in order to set a date for the examination session, and this should be notified to the appellant by acknowledgement receipt registered mail and by e-mail.

**Article (93):**

The Petition Committee shall examine the cases furnished thereto, and shall communicate with stakeholders requesting further explanations and responses to inquiries and it also has the right to request any further explanations from the Unit or Competent Administrative agencies.

Whenever the need arises, the Committee is entitled to delegate the technical secretariat to prepare a comprehensive report on the subject matter of the petition, its legal implications and the technical opinion in this respect shall be solely advisory.

**Article (94):**

Petition Committee shall resolve the appeals it receives within a maximum of thirty days from the date of receipt thereof, and its decision in this regard is final and binding, and abided by the Administrative Authority. The petition office shall notify the Administrative Authority and appellant of the Committee's decision by acknowledged receipt registered mail.

**Article (95)**

The Petition Committee shall appoint a technical secretariat by virtue of a decree issued by the Minister of Finance, based on the suggestion of the Director of the Unit. The key function of this Secretariat is to prepare the files of the filed appeals and petitions to the Committee, and attached documents and memos, and will be in charge of recording the minutes of its sessions, follow up the implementation of decisions, and other activities delegated thereto by the Committee. The Unit shall be responsible of settling the fees and honoraria of both the Petition Committee and its technical secretariat within the amount of five thousand Egyptian pounds which to be disbursed to every member for every petition case.

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