

# Bidding for Qatar PPP projects under new PPP law

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Qatar is already using a form of public private partnership (PPP) structure to deliver projects in its water and power sectors, and has recently expanded the PPP model to other sectors. Ashghal recently awarded the first PPP package to a private real estate company for the design, build, finance and maintenance of eight public schools across Qatar for a 25-year term. The schools will be leased to the government after construction. This is the first phase of the government's plan to deliver 45 schools under its PPP Development Programme.

A new PPP Law No. 12 of 2020 was published on 31 May 2020 to regulate the operation of PPPs in Qatar. The tender process for the first PPP school package had commenced prior to the enactment of the new PPP law. All future tenders for the other PPP school packages, and any expansion of the model to other sectors, will be governed by the new PPP law. What follows is an overview of the key aspects of the new PPP law for project sponsors and lenders to consider.

## PPP models

The following PPP models are expressly recognised under the new PPP law:

- **Land Development** – Land is allocated through a lease or usufruct for development by the private sector for the duration of the term of the lease or usufruct.
- **Build, Operate and Transfer (BOT)** – The private sector designs, finances, builds, operates and maintains the asset for the duration of the term. The asset is then transferred to the government at the end of the term. The private sector does not own the asset, but receives payment from the government or end users. This model is typically used to build toll roads under a concession.
- **Build, Transfer and Operate (BTO)** – The private sector designs, finances, builds and transfers the asset to the government at the end of construction. The private sector operates and maintains the asset for the duration of the term.
- **Build, Own, Operate and Transfer (BOOT)** – This is similar to BOT, but the private sector will own and finance the asset until it is transferred to the government. This is typically used to build power stations, water treatment plants and sewage treatment facilities.
- **Operation and Maintenance** – The private sector provides operation and maintenance services for a fee in relation to an asset built by a third party on behalf of the government.

## Tender process

The new PPP law expressly makes it clear that the Qatar tenders law that applies to the procurement of capital works and services does not apply to PPP projects. Government procurement authorities and bidders need to comply with the PPP law during the tender process for PPP projects. The new PPP law recognises two-phase tendering, restricted tendering, procurement by negotiation, competition, auction and direct award. Depending on the procurement strategy adopted by the procurement authority, tender documents need to be prepared and must comply with the requirements under Article 9. The tender documents would, as a minimum, include:

- General information relevant to the PPP project
- Technical and financial specifications for the project
- Tender qualification requirements for bidders
- Form of project company and the conditions to be met
- Principal terms of the partnership contract or project agreement
- Incentives offered to bidders, which may include tax incentives
- Evaluation criteria
- Value of the preliminary bond and final bond (if required)

The procurement authority needs to appreciate that PPP projects are different from capital works projects. As such, the procurement authority should understand that the private sector sponsors have flexibility to develop a design solution that meets the output specification. Therefore, the traditional approach of the client reviewing the design and providing comments on the same should not be adopted to avoid making preferential engineering design changes. Design review and comments should be minimal, to the extent that the sponsors' design solution fails to meet the agreed output specification.

## Project business case

One of the key advantages of PPP models is to provide value-for-money to the government. The private sector sponsors carefully consider the whole lifecycle costs of PPP projects to ensure they are factored into the design engineering and maintenance of the asset. To ensure there is long-term value for money during the entire project lifecycle, a project business case is required under the new PPP law.

The project business case is submitted for the approval of the Prime Minister, and must comply with the requirements of Article 7. It should include the strategic and operational advantages of the project, implementation plan, CAPEX, land allocation and other requirements. A project concept report must be submitted for approval by the Council of Ministers under Article 5 prior to the project business case being prepared for approval.

## Partnership contract or project agreement

The government procurement entity will enter into a partnership contract or project agreement with the preferred private sector sponsor. The maximum term of the contract is 30 years, but this can be extended after obtaining the Prime Minister's approval. Article 17 of the PPP law sets out the minimum terms and conditions of the contract. There are certain restrictions (e.g. change of control) imposed on the project sponsor under Article 24. The PPP law requires that the contract be governed by Qatar law and all disputes be resolved by the Qatar courts as a default position. International project sponsors and lenders are likely to prefer that disputes be resolved through international

arbitration, and the PPP laws allows the parties to do so, subject to the approval of the Prime Minister.

## Conclusion

The PPP model is an attractive alternative route to building key social infrastructure projects to deliver against the Qatar 2030 Vision. The proposed PPP models and the enactment of the new PPP law align with best industry practice, and should attract foreign direct investment from experienced international project sponsors and lenders.

We expect new PPP projects to be delivered in the lead-up to the Qatar 2022 World Cup and beyond. Project sponsors and lenders should be aware of the requirements for delivering such projects under the new PPP law.

Our team has extensive experience in advising project sponsors and lenders on PPP projects. Please contact us if you have any enquiries.

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