

NATIONAL CENTRE FOR PRIVATISATION RELEASES THE PRIVATISATION PROJECTS MANUAL

INTRODUCTION

The Saudi Council of Ministers identified, through its Resolution No. 665 dated 8/11/1438H (corresponding to 31 July 2018) (Resolution No. 665), ten sectors targeted for privatisation and established a framework of Supervisory Committees. This framework provides the governance necessary to ensure a successful and transparent execution of public private partnership (PPP) projects and sale of assets projects (collectively, the privatisation projects) within the targeted sectors. The National Centre for Privatisation (NCP) was mandated to issue and develop a comprehensive governance model for the Supervisory Committees' works, functions and procedures to execute the privatisation projects.

On 19 April 2018, the NCP issued the Privatisation Projects Manual (the Manual) which was subsequently published on 29 May 2018. The Manual is designed to regulate all aspects of privatisation projects within the sectors targeted for privatisation, including defining whether privatisation is the most appropriate option for achieving the objectives of the proposed project, developing the project for privatisation implementation and the approval process.

Legal status and application

The Manual was issued by the Board of the NCP through its Decision No. (2/5/2018) dated 03/08/1439H (corresponding to 19 April 2018G) and published on 14/09/1439H (corresponding to 29 May 2018G) pursuant to the National Centre for Privatisation Regulation issued by the Council of Ministers Resolution No. (355) dated 7/6/1438H, and Resolution No. 665.

The Manual applies to the current Supervisory Committees as well as to the Supervisory Committees to be formed in the future. The Manual also applies to all privatisation projects supervised by the Supervisory Committees, including the projects commenced after the issuance of the Manual and projects that have started before the issuance of the Manual.

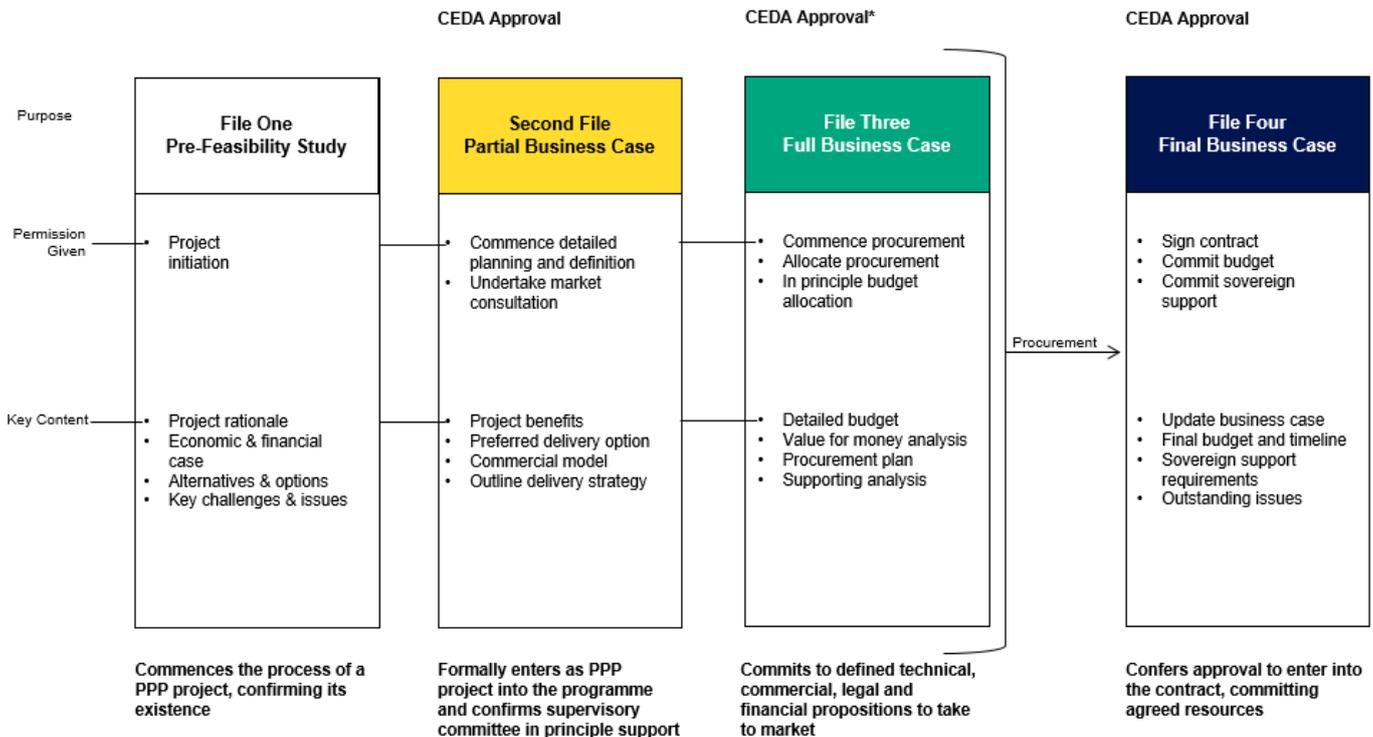
Compliance with the Manual is mandatory. Entities and Supervisory Committees (including their work teams and secretariats) may not deviate from the provisions of the Manual, or any other instruction or procedures issued by NCP, without prior approval by NCP. Non-compliance with the Manual could lead to a rejection of the Privatisation Project by the Council of Economic and Development Affairs (CEDA), the relevant Supervisory Committee or the NCP.

Key points:

- NCP has released the Privatisation Projects Manual
- The Manual is mandatory for all privatisation projects in the Kingdom (including ongoing projects)
- The Manual introduces a four-file process of preparing and approving projects. The Manual sets out detailed requirements for each file
- The Manual also provides comprehensive guidelines for the procurement process
- Further updates and templates expected in due course.

Public Private Partnerships

File Approval Structure



*Authority can be delegated to the supervisory committee

Source: Privatisation Projects Manual

Approving a privatisation project

The Manual introduces a phased preparation process for preparing and approving a project to ensure its success:

- The First File "Pre-Feasibility Study"
- The Second File "Partial Business Case"
- The Third File "Full Business Case".

Each of the first three files requires a greater degree of data and analysis, followed by the relevant approval, as set out below.

These phases are followed by the procurement phase and subsequently, the Fourth File or "Final Business Case". Thereafter the project is able to close.

First File (Pre-Feasibility Study) (3.1.1-3.1.4)

The purpose of the First File (or the Pre-Feasibility Study) is to examine at a high level the project's service requirements and desired outcomes, and its potential, commercial, legal and financial structure to determine whether the project should proceed to the next stage. Specifically, the First File should set out:

- Project rationale and needs assessment

- Identification of the project's direct and indirect economic benefits
- Preliminary financial case (including indicative implementation cost estimate) and initial identification of the financial viability of the project
- Preliminary assessment of affordability, if the project is to be funded by the Government, and the potential reasonableness of service costs and identified alternatives
- Rationale for the project to be a privatisation project (as opposed to a traditional public procurement) and any alternative means of addressing the needs being addressed by the project
- Initial market assessment
- Identification of key technical, environmental, social/stakeholder and legal issues
- Project plan for the development of subsequent files
- Recommendation as to whether the project should proceed to the next stage.

The First File is submitted to the applicable Supervisory Committee for approval before the project is allowed to proceed to the Second File stage.

Second File (Partial Business Case) (3.1.5-3.1.8)

The Second File (or the Partial Business Case) covers similar topics as the First File, but in significantly greater detail. The main objective of this File is to narrow considerations to a single project concept which will be subject to final analysis and review.

A key component of the Second File is a qualitative value for money assessment, which is not required in the First File. The Manual sets out the requirements for the qualitative assessment in 4.12.3. Such assessment should address what the project's main characteristics are that could lead to value for money under the preferred procurement option and why (eg scale, scope, whole life costing approach, delays, cost overruns, etc.). The assessment should also provide an explanation and assessment of how the risk allocation will result in value for money.

The Second File is first submitted to the applicable Supervisory Committee for approval and thereafter to CEDA before the project is allowed to proceed to the Third File. However, we note that pursuant to Royal Order No. (52631) dated 15/11/1438H (corresponding to 8 August 2017G), if the project is of a value greater than SAR100 million, a Council of Ministers' approval is required. The Manual does not clarify whether a Council of Ministers' approval is required after obtaining CEDA approval on the Second File to proceed to the Third File.

Third File (Complete Business Case) (3.1.9-3.1.12)

The Third File stage (or the Complete Business Case) commences after obtaining the necessary approvals for the Second File. It provides a comprehensive evaluation sufficient to make a final decision as to whether to proceed with the procurement of the project. The Third File updates key sections of the Second File and supplements it with the following new sections:

- Detailed Risk Allocation analysis

- Quantitative Value for Money Assessment
- Additional studies as required, including a Social Impact Assessment, an Environmental Impact Assessment and Demand/Market Study. Social and Environmental Impact Assessments should follow the Equator Principles (www.equator-principles.com) and, in the case of the Environmental Impact Assessment, the relevant provisions of the Saudi Environmental Law
- The Project Plan for this file should include a detailed procurement plan (see details below) and a Stakeholders Communication Plan.

The Third File is subject to review and approval by the Supervisory Committee and CEDA before proceeding to the procurement of the privatisation project. CEDA may delegate the authority to grant such approval to the relevant Supervisory Committee. As in the Second File, the Manual does not clarify whether a Council of Ministers' approval is required after obtaining CEDA approval on the Third File to proceed to the procurement of the project.

Procurement process

Royal Decree 52631 dated 15/11/1438H (corresponding to 8 August 2017G) directed the Saudi Bureau of Experts within the Council of Ministers to undergo the necessary regulatory steps to exempt all Privatization Projects contracts from the application of the Government Tenders and Procurement Law. We understand that this is being progressed and an exemption is expected to be issued in due course.

The Manual sets out the applicable high-level structure of the procurement and award process for the privatization projects.

Procurement Plan (3.2.1-3)

The work team must prepare a procurement plan setting out how the procurement is conducted and awarded which should include:

- Summary of the project
- Procurement work plan (eg procurement schedule and steps, timeline, and responsibilities)
- Procurement method (eg restricted or open competitive approach)
- Procurement staffing plan, including use of external advisers
- Procurement budget
- Indicative debt and equity term sheets (eg debt/equity structure, equity participation, debt funding and supports and guarantees)
- Draft of the privatisation contract
- Stakeholder's communication plan.

If the procurement plan finalised after approval of the Third File contains material revisions from the procurement plan approved as part of the Third File, it should be submitted again to the Supervisory Committee for review and approval.

Market engagement (3.2.4-5)

Market engagement/advertising is the formal process by which the work team advertises and gives notice of the RFQ (and eventually RFP) process for a project.

Advertising of the privatisation project (as opposed to market assessment, which is part of the project preparation process) shall only take place after Third File approval by the Supervisory Committee.

The RFQ may be advertised in newspapers/mass-media, Ministry or other entity newsletters/website(s), procurement bid boards and sites, industry publications, or existing networks. Market engagement and advertising may also include industry meetings, project 'road shows', and other open information sessions for interested parties and potential bidders.

Request for qualification (RFQ) (3.3.1-14)

The primary role of the RFQ is to identify a shortlist of qualified bidders in a competitive, transparent and meaningful process. Typically the shortlist will include between three and five bidders. The Manual refers to an RFQ template to be used, and we understand this will be issued in due course. The RFQ should be issued in English and should:

- Provide an overview of the privatisation opportunity
- Describe the preliminary financing assumptions and expectations
- Identify the contracting approach
- Contain detailed instructions on the process to the bidders
- Identify the information, materials and requirements that a bidder must submit and demonstrate in their Statement of Qualifications (SOQ) in order to be evaluated for qualification in the privatisation opportunity
- Set out and clearly specify the criteria by which the work team will evaluate each bidder.

Once prepared, the RFQ should be published in accordance with the guidelines set out in the Manual. The project should be advertised at least four weeks prior to the RFQ deadline.

Once the RFQ has been launched, the Manual provides that a pre-qualification conference may be organised.

RFQ evaluation (3.3.15-25)

The Manual sets out the process by which the SOQs are evaluated. The work team must set up an Evaluation Panel comprised of qualified participants and subject matter experts in the areas to be evaluated, including for example technical, financial, and legal evaluators. All members must be independent. The NCP shall also have a representative on the panel.

The work team must also establish an Evaluation Panel Secretariat, which will assist the Evaluation Panel in the administration process of the evaluation activity and help ensure adherence to the evaluation procedures. The Evaluation Panel Secretariat shall also prepare the SOQ evaluation templates against which the SOQs are evaluated.

All SOQs must be opened simultaneously on the RFQ closing date. In case less than five SOQs have been received, the Supervisory Committee shall

report the issue to NCP for approval to open the SOQs. The purpose of the evaluation is to reduce the longlist (ie those bidders who submitted a SOQ) to a shortlist of qualified bidders. The Evaluation Panel shall prepare a SOQ Evaluation Report which should include (amongst others) a summary of the criteria evaluated, the bidder ranking, a summary of the strengths and weaknesses of the three to five or more highest qualified bidders and the three least qualified bidders, and a list of recommended bidders.

The SOQ Evaluation Report is submitted to the Supervisory Committee for approval. Thereafter the work team notifies the shortlisted bidders, announces the shortlisted bidders' details to the public according to the Manual and, if requested by the bidders, conducts debriefing sessions with the unsuccessful bidders.

Request for proposal (RFP) (3.4.1-13)

The role of the RFP process is to identify a single bidder from the bidder shortlist that offers the best value for the Kingdom. Preparation of a draft RFP should commence after approval of the Third File. The Manual refers to an RFP template to be used, and we understand this will be issued in due course. Deviations from the RFP template require the approval of the NCP.

The RFP should contain:

- Instructions for bidders, including procedure for bid preparation, and a description of how the bids will be evaluated
- An overview of the project, including any financing assumptions or minimum capital contributions
- A draft of the privatisation contract and any other relevant project agreement and the degree to which bidders may rely on them
- A list of the information and materials that the bidder must provide in their bid (including the technical proposal and a financial proposal).

After posting the draft RFP to the shortlisted bidders, a number of activities can be undertaken by the work team prior to the final RFP, in accordance with the schedule established in the Procurement Plan:

- The work team may conduct one or more pre-bid conferences with shortlisted bidders (which may be made mandatory for shortlisted bidders)
- Consideration of written comments on the draft RFP documentation, including the draft privatisation contract
- Consideration of Alternative Technical Concepts (ATCs), being a suggestion from a bidder that a different technical concept from that required by the draft RFP may provide greater benefit to the Kingdom. If the work team believes that an ATC suggestion has merit, the RFP may be amended to reflect this suggestion. However, in this event, the Third File and all associated information shall be updated to reflect the revised project concept and shall be submitted to the Supervisory Committee for review and approval with the final RFP.

The Manual notes that multiple rounds of clarifications and responses may be conducted.

After the bidder conferences have been conducted and written comments, if any, have been received and responded to, the RFP is finalised and submitted

to the Supervisory Committee for final approval and thereafter, released to the bidders.

RFP evaluation and negotiation (3.3.14-3.5.4)

Bidders should be allowed at least 60 days to respond to the RFP. All bids received shall remain unopened through the bid closing date and until bid opening. Bids shall not be opened before no fewer than three bids have been received, unless NCP approves otherwise.

The RFP shall include the criteria by which a bid will be evaluated, which should include:

- Responsibility and capability
- Technical proposal (approaches to project management, design and construction, operations and maintenance)
- Financial proposal
- Comments on the draft privatisation contract.

Similar to the RFQ evaluation phase, the evaluation is conducted by an Evaluation Panel, supported by an Evaluation Secretariat, which shall prepare a bid evaluation template.

Clarification meetings may be conducted with bidders to clarify aspects of their bids and request missing or additional information.

In some cases, there may not be a clear and compelling rationale for the selection of the preferred bidder. In this case, the work team may propose a Best and Final Offer (BAFO) as an optional step. The Manual states that BAFOs shall normally be conducted when the evaluated difference between the highest ranked bid and second highest ranked bid is less than five percent. A BAFO request must be approved by the Supervisory Committee.

Once a preferred bidder has been selected, the work team shall proceed with final negotiations.

If requested by the bidders, the work team shall conduct debriefing sessions with the unsuccessful bidders. The Manual also sets out a Privatisation Procurement Appeals Procedure which provides a venue for private parties who feel they have been aggrieved by a breach of the Privatisation regulations to seek remedy.

Fourth File (Final Business Case) and financial close (3.6.1 – 3.8.3)

Once a preferred bidder has been identified and final negotiations have concluded, the Third File projections of the technical and commercial outcomes expected from the privatisation can be replaced by the actual outcomes of the privatisation in the Fourth File, or Final Business Case. The Fourth File is a complete update of the Third File, and the requirements in terms of content and format are identical.

The Fourth File (along with a summary report identifying the material differences between the Third File and the Fourth File) shall be submitted to the Supervisory Committee for approval, and thereafter to CEDA, unless the Supervisory Committee has been authorised by CEDA to give such approval. As in the Third File, the Manual does not clarify whether a Council of Ministers' approval is required after obtaining CEDA approval on the Fourth File to proceed to the execution of the privatisation contract.

Following approval, the privatisation contract is executed. Financial close occurs when the conditions precedent set out in the privatisation contract have been satisfied.

Communication with stakeholders and the private sector (4.1 – 4.2)

The Second File should contain a Stakeholder Index identifying known Stakeholders for each potential project approach, including a brief description of their perceived interest or concerns and how they might be handled in the implementation of the proposed project.

The Third File should include a formal Stakeholder Communication Plan, which shall detail specifically, all known Stakeholders that will be impacted by the project, their interests or concerns, and the anticipated process or approach the work team will use to engage with them.

Communication with the private sector should follow the procedure set out below:

| | |
|--|---|
| First File | No communication with bidders |
| Second File | Controlled interactions as part of market sounding |
| Third File | As for Second File, except that structured public meetings with interested parties may be conducted |
| After Third File approval until Contract Award | Communication only in accordance with the Manual and as set out in the RFQ and RFP documents |

Unsolicited proposals

The Manual also provides the procedure for consideration and evaluation of unsolicited proposals for various public-sector projects that may be submitted by the private sector. Upon receiving an unsolicited proposal that the relevant public sector entity considers worthy of further consideration, the relevant entity shall submit a request to its relevant Supervisory Committee for approval. The request shall contain details similar to those required for the First File. However, the Supervisory Committee approval will determine whether the privatisation process in respect of such unsolicited proposal will commence from the First File stage or the Second File stage.

The private party submitting the unsolicited proposal will not have any advantage in the bidding process and will be treated as equal with all other bidders. The private party who submitted the unsolicited proposal is eligible to receive certain compensation, as set out in the Manual, in case the unsolicited proposal results in the award of a project and such private party either did not participate in the bidding process or was unsuccessful.

Conclusion

Overall the Manual is a clear statement of the expectations of the NCP in relation to privatisation projects. It will prove a valuable resource to all stakeholders as the Kingdom looks to implement the privatisation programme and its Delivery Plan 2020, as part of the overall Vision 2030 objectives. The

Manual has been made available in Arabic and English on the NCP's website and we understand that it has already been distributed to all relevant government departments. Therefore, all government entities and their advisors should review and adopt the relevant sections of the Manual as a matter of urgency. That said, the Manual does state that it will be subject to further updates from time to time and so further developments can be expected in due course.

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2018

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323/12/699

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