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PUBLIC - PRIVATE PARTNERSHIPS UNSOLICITED PROPOSALS IN KSA

An unsolicited proposal ("**USP**") is defined by the World Bank as a proposal made by private parties to undertake a Public-Private Partnership ("**PPP**") project. USPs are submitted at the initiative of the private party, rather than in response to a request from the government. USP frameworks aim to generate new and innovative infrastructure proposals, make the government open for business and job opportunities, harness the creativity and innovation of the private sector, and create a clear and fair process for receiving and evaluating proposals. By managing USPs appropriately, governments may encourage private sector participation, attract investments, and foster innovation in key sectors.

The Kingdom has enacted a USP regime in the Private Sector Participation Law issued by Royal Decree number (M/63) dated 5/8/1442H. (the "**PSP Law**") and its Executive Regulations issued and amended by the decision of the Board of Directors of the National Privatization Center (NCP) under the number (1-4-2023) dated 31/12/2023H. (the "**PSP ER**").

The PSP Law governs PPP and divestment projects. PPPs are defined as contractual arrangements between the public and private sectors, relating to infrastructure or public service, which fulfill certain criteria outlined in the law as follows:

- Duration: the contractual arrangement should have a 5 to 30-year term.

- Scope: the private party should carry out two or more of the following services: design, construction, management, operation, maintenance, or financing.

- Risk allocation: there should be a qualitative and quantitative allocation of risks between the government and the private party.

- Deductions: the payments owed by or to the private party should be primarily based on performance.

- The Minimum value: the minimum value threshold for a PPP project should be two hundred million (200,000,000) riyals. The value of the project is calculated based on the projected total nominal value for the term of the PPP project.

Divestment projects subject to the PSP Law are contractual arrangements related to infrastructure or public services that result in transferring ownership of an asset from a government entity to a private party. The minimum value threshold for a divestment project is fifty million (50,000,000) riyals, calculated based on the estimated value of the asset.

Furthermore, the PSP Law only applies to sectors targeted by the privatization program. The Council for Economic and Social Development Affairs (CEDA) may decide to subject projects that do not fulfill the above-listed criteria or exclude projects that do from the PSP Law.

Key Features of the PSP Law Unsolicited Proposals Regime

USP Definition under PSP Law: the PSP Law defines USPs as a proposal related to a project that has not been submitted in response to a request for proposal. USPs should meet various conditions including the requirement to comprise innovative solutions and achieve value for money.

Submission Process: unsolicited proposals must be submitted to the Contracting Authority (either the sector supervisory committee or the sector-concerned entity), which is under no obligation to consider them. Within thirty working days of receiving the USP, the Contracting Authority can either decide to study it or return it unopened with a statement explaining that proposals for the project or sector are not being presently considered.

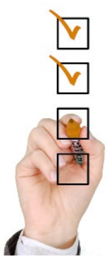
If the Contracting Authority chooses to study the proposal, it should notify the proponent of its receipt, consider the proposal, request clarification or additional information without entering into negotiations or contractual agreements, and complete the review within ninety working days. The authority may, subject to the NCP's board approval, request the proponent to pay a fee reflecting the expected costs of the proposal examination.

Advantages to proponent: in case of a public tender, the Contracting Authority may consider the proponent as prequalified without the need to submit a statement of qualification.

Proposal development cost: if the proponent is not awarded the contract as a result of the tendering process, the Contracting Authority may, subject to the approval of NCP's board of directors and the Ministry of Finance, compensate the applicant for direct and reasonable costs incurred for the preparation and submission of the USP. For this purpose, the Contracting Authority may include in the tender documents' provisions stipulating that the preferred bidder awarded the project shall compensate the proponent. In such cases, the tender documents shall identify the compensation amount.

Contracting Method: the USP project may be tendered through an open competitive tendering process, a limited tendering process, a direct award, or any other appropriate tender process based on the project characteristics.

Safeguards: the Contracting Authority should *inter alia* refrain from direct communication with the proponent regarding the tendering process, except as permitted under specific circumstances outlined in the PSP Law. Additionally, the Contracting Authority must ensure transparency, publicity, equal opportunities, and fairness for all competitors involved in the process.



The PSP Law's unsolicited proposals framework allows private sector-initiated engagement in infrastructure development. This innovative approach fosters collaboration between the government and private entities. By allowing unsolicited bids, the Kingdom aims to tap into the creativity and expertise of the private sector, allowing both local and foreign investors to contribute to the nation's economic growth and offering them an opportunity to address infrastructure gaps and enhance public services proactively.

Should you have any queries or require further clarification, please do not hesitate to reach out to Hadi Melki at +966 54 426 3545 or via email at hadi.melki@blkpartners.com.