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Legislation

No. 1

Instructions of Investment and Partnership between the Centrally-Funded Entities and the Private Sector

No. (1) Of 2024

تعليمات الإستثمار والشراكة بين الجهات الممولة مركزياً والقطاع الخاص

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Instructions

Council of Ministers

Based on the provisions of Article (2/ Second/ 2/ b/ 5) of the Federal Budget Law of the Republic of Iraq for the fiscal years (2023-2024-2025) No. (13) of 2023, the following instructions have been issued:

NO. (1) OF 2024

**INSTRUCTIONS OF INVESTMENT
AND PARTNERSHIP BETWEEN THE
CENTRALLY-FUNDED ENTITIES
AND THE PRIVATE SECTOR**

ARTICLE 1

The centrally-funded entities may conclude investment contracts or partnership with the private sector within the limits of their competencies to achieve one or more of the following:

First: Improving services or increasing or developing production.

Second: Reducing public expenditures allocated in the budget for the general sector.

Third: Increasing and enhancing revenues.



Instructions

ARTICLE 2

First: The centrally-funded entities may conclude investment contracts in accordance with the Investment Law No. (13) Of 2006 (as amended) or partnership in accordance with these instructions in new or existing projects or completing old projects.

Second: The projects related to security and defense that affect the security and sovereignty of the state shall be excluded from the provision of Item (First) of this article.

ARTICLE 3

Investment projects may be financed in convertible foreign currency.

ARTICLE 4

The head of the centrally-funded entity shall form a committee to facilitate the implementation of the project in accordance with the type of investment contract, prepare project documents, obtain original approvals from the relevant authorities and finally complete the implementation of the project and control it.

ARTICLE 5

Centrally-funded entities may conclude partnership contracts with the Iraqi or foreign private sector in accordance with one of the following models:



Instructions

First: Service Contracts: They include the provision of services, including (collection of wages, maintenance of devices/ vehicles, road repair, maintenance of facilities, health and treatment services and educational services).

Second: Management Contracts: They include construction and maintenance work, the contracting party shall retain ownership of the assets and shall be responsible for providing the service and bearing commercial risks and capital investments, and the contract shall be for a fee linked to the efficiency of the administration ranging from (3) three to (5) five years, renewable with the approval of the Council of Ministers.

Third: Lease Contracts: They shall include operation and maintenance work. The lessee shall bear the commercial risks of the operation work. The centrally-funded entity shall maintain ownership of the assets, and shall bear responsibility for the main investments, and shall undertake coordination between the investment programs and the lessee's commercial program and the extent of the need for a regulatory body to follow up on the lessee's commitment. Its duration is from (3) three to (5) five years, renewable with approval of Council of Ministers.

Fourth: Other models of contracts pursuant to the following:

1.	Building, operating and transferring the ownership	BOT
2.	Building, operating and renewing franchise	BOR
3.	Building, owning, operating and transferring the ownership	BOOT



Instructions

4.	Building, leasing and transferring the ownership	BLT
5.	Building, transferring the ownership, operating	BTO
6.	Designing, building, financing and operating	DBFO
7.	Designing, constructing, managing and financing	DCMF
8.	Updating, owning, operating and transferring the ownership	MOOT
9.	Rehabilitating, owning and operating	ROO
10.	Rehabilitating, owning and transfer the ownership	ROT

Fifth: State departments may have the authority to conclude partnership contracts in a way that achieves the objectives stipulated in Article (1) of these instructions.

Sixth: Any type of contract shall be consistent with the provisions of these instructions and shall be approved by a decision of the Council of Ministers in a manner that does not conflict with the relevant legislation. The Council of Ministers may consider granting any of the partnership contracts an investment license.



Instructions

ARTICLE 6

Centrally-funded entities shall prepare the following requirements before announcing the implementation of their projects pursuant to the partnership method:

First: Detailed feasibility study of the project that includes the technical, financial, legal and environmental aspects.

Second: An updated estimated cost of the project.

Third: Prior approvals to allocate the land for the implementation of the project, free of any problems or financial or legal obstacles.

Fourth: Any other requirements required by the nature of the project.

ARTICLE 7

A partnership committee shall be formed in the Ministry of Planning to study the issues submitted by centrally-funded entities regarding the projects to be implemented in this manner for the purpose of clarifying any overlap with the projects included in the investment budget and determining their suitability to development standards and spatial gaps, provided that the committee complete its work within a period not exceeding (30) Thirty days for each project from the date of receipt.



Instructions

ARTICLE 8

Centrally-funded entities shall be responsible for identifying investment opportunities, completing their legal and economic requirements, and submitting them to the Council of Ministers for approval.

ARTICLE 9

First: Central-funding entities shall depend on the principle of transparency through conducting a dialogue for the competitors wishing for participating in implementing the project of partnership before submitting their tenders for viewing the project details, its objectives, service type, method of funding, risk-sharing process and other consequences resulting from implementing the project, in a way ensures informing all of the complete information, trying to benefit from what is discussed in these dialogues and reflecting it on the project document whether in amending it or re-discussing it again.

Second: Adopting the ways of contracting stipulated in Article (3) of the Regulations of the Implementation of the Governmental Contracts No. (2) of 2014 pursuant to the nature of each project.

Third:

- a. In the centrally-funded entities, a central committee shall be formed and headed by whoever is nominated by the entity's head and the membership of representatives of the legal, engineering and contracting formations.



Instructions

- b. The Committee stipulated in Paragraph (a) in this Item shall be responsible for negotiating with the candidates on the referral in accordance with data and limitations prepared by the Committee of Analysis and Evaluation; and the Committee may seek help from a specialized team other than the members of the central committee for negotiating, provided that the results of the negotiations are returned to the Analysis Committee again to submit the appropriate recommendation to the Reviewing and Approval Committee to make the appropriate decision concerning it and in accordance to the powers granted to it.

ARTICLE 10

The centrally-funded entity shall be responsible for preparing the contract draft in coordination with the special partner, provided that it includes all the details, in accordance with the conditions, project documents, the bidder, the negotiation result and the final report of Tender Evaluation and Analysis Committee for legally approved, it shall be guided by the standard draft contract mentioned in the Guideline for Implementing Partnership Contracts issued by the Ministry of Planning.

ARTICLE 11

The centrally- funded entity may form a committee in accordance with the law shall be responsible for supervising the implementation of the contract.

ARTICLE 12

Disputes arising from partnership contracts shall be subject to the jurisdiction of the Iraqi judiciary and may be settled in one of the following ways:



Instructions

First: Conciliation: The parties of dispute shall involve the conciliator who meets with the parties in an attempt to resolve their disputes and help them to reach an friendly solution. An appendix to the contract shall be organized that is binding on its parties.

Second; Arbitration: If the dispute is not resolved in friendly manners, it may resort to the arbitration as a means of dispute resolution, after obtaining the approval of Minister Council.

ARTICLE 13

The concluded contracts of partnership in accordance with the provisions of these regulations shall enjoy all the guarantees determined by the contract.

ARTICLE 14

The centrally-funded entities may allow the bidder of the companies, institutions and the qualified persons from all the state to participate in the opportunity of partnership and investment and implement the contracts of the partnership projects, and those who have the required specializations under the documents of partnership, except for the following cases:

First: If there is a legislation preventing the commercial dealing with bidder's state.

Second: If there are resolutions issued by the Security Council prohibit its member states from dealing, contracting or paying to individuals or institutions in the bidder's state.

Third: Issuance of decisions by the competent authorities prohibit dealing or contracting with entities contracting with the private sector.

Fourth: If there is a conflict of interests.



Instructions

ARTICLE 15

First: The centrally-funded entity shall terminate the partnership contract with the private partner and hold it responsible for the value of the damages caused by the loss of the alternative opportunity when any of the following cases occur:

- a. If the contractor waives the contract to a third party or subcontracts without written approval by the centrally-funded entity.
- b. If the contractor presents forged papers or documents related to the contract.
- c. If it is proven that the contractor committed a corruption crime.
- d. If the contractor fails to implement his/ her obligations in accordance with the terms of the partnership contract, which caused damage to the centrally-funded entity and to the service that must be provided by him/ her.

Second: The private partner may terminate the partnership contract in the event that the centrally-funded entity breaches its obligations stipulated in the terms of the contract to the extent that makes the partner unable to fulfill his/ her contractual obligations and after exhausting all methods of dispute settlement for the other party.

Third: The centrally-funded entities or the private partner shall issue an official warning to the other party within a period of (30) thirty days before resorting to terminating the partnership contract, in accordance with the provisions of Items (First) and (Second) of this Article, with the exception of cases proving that the submitted papers were forged or corruption crimes were committed.



Instructions

ARTICLE 16

The centrally-funded entity, after conducting the required investigation, and when it convinces that any person, office or company has committed an act of corruption or fraud that violates the contract and applicable laws, shall take the following measures:

First: Excluding the company's bid.

Second: Approaching the Government Contracts Department in the Ministry of Planning to include the entity on the blacklist, without violating other legal procedures.

ARTICLE 17

The percentage of profits of the centrally-funded entity in the partnership contract shall be determined in accordance with the discretion of the Council of Ministers upon obtaining its approval of the contract, provided that it is reallocated by the Ministry of Finance within the budget of the concerned entity in accordance with the disbursement sections determined by the Council of Ministers for each case presented to it.



Instructions

ARTICLE 18

These instructions shall be Implemented as of the date of their publication in the Official Gazette

Muhammad Shiaa Al-Sudani,
Prime Minister