

Revenue Sharing Rules

Article (1):

Unless the context otherwise indicates, the following words and terms, wherever they appear throughout these Rules, shall have the meanings herein specified:

Kingdom: The Kingdom of Saudi Arabia.

Rules: The Revenue Sharing Rules.

GTPL: The Government Tenders and Procurement Law.

Regulations: The implementing regulations of the GTPL and the regulations issued pursuant to it.

MoF: Ministry of Finance.

Minister: Minister of Finance.

Government Entity: Any Ministry, government body, public agency, authority, institution, or any other entity with an independent public legal personality in the Kingdom.

Head of Government Entity: Minister, president, governor, or principal officer of a Government Entity.

Portal: The unified electronic portal designated for government procurements pursuant to the GTPL.

Private Partner: A person with a private legal personality who is contracted to secure Goods and Services based upon Revenue Sharing pursuant to the Rules.

Beneficiary: Any natural or legal person who provides a financial consideration in return for benefiting from the Public Services provided by the Private Partner pursuant to the Contract.

Revenue: The gross revenue generated by the provision of Goods and Services.

Asset: Any asset, whether permanent, temporary, immovable, movable, tangible or intangible, including rights.

Intangible Rights: An exclusive (non-material) right that can be granted to others such as intellectual property rights.

Revenue Sharing: A type of contracting, pursuant to the provisions of the GTPL and the Regulations, between a Government Entity and a Private Partner, to secure Goods and Services for the provision of Public Services to the Beneficiaries, in which the Private Partner bears risk and management responsibility through the life of the Contract, and remuneration is based on the distribution of Revenue between the parties to the Contract.

Goods and Services: Any goods or services that are secured for a Government Entity for the purpose of providing Public Services to the Beneficiaries.

Public Service: Any service provided, directly or indirectly, by a Government Entity to provide goods or services to the Beneficiaries.

Contract: Revenue Sharing contract for securing Goods and Services.

Value for Money: The Private Partner's achievement of an economic return for the State (whether directly or indirectly) throughout the Contract stages.

Net Present Value under the Contract: The expected net Revenue for the duration of the Contract, minus the value of direct financial obligations incurred by the State based on the Contract (if any).

Pre-Qualification: Measures taken by the Government Entity to ensure that bidders, prior to submitting their proposals, have the qualifications and capabilities necessary to secure Goods and Services.

Post-Qualification: Measures taken by the Government Entity to ensure that a bidder, upon having been selected as the best proposal and prior to awarding the tender, has the qualifications and capabilities necessary to secure Goods and Services.

Public Sector Comparator (PSC): An estimate of the whole-life or baseline costs, Revenue, and risks of the project from the state's perspective, if the project were to be implemented through any manner of contracting pursuant to the provision of the GTPL and the Regulations without Revenue Sharing, taking into account any State Revenues that would be received in this circumstance.

Revenue Sharing Formula: The formula which determines the projected Revenue, and its distribution ratios.

Private Sector Participation (PSP): Public-Private Partnership (PPP) and/or Divestment pursuant to the definition stated in the PSP Law issued by Royal Decree No. (M/63) dated 5/8/1442H.

Article (2):

The provision of Goods and Services based upon Revenue Sharing aims to the following:

1. Enhancing the quality of Goods and Services, reducing public spending, increasing State revenues, and improving the Value for Money of the State's Treasury by allowing Government Entities to secure their purchases of Goods and Services from the Private Partner based upon Revenue Sharing.
2. Encouraging the private sector to invest and benefit from its financial, administrative, organizational, technical, and technological capabilities and expertise, in a way that enhances the economic and social development of the Kingdom and obtains the best Goods and Services at the lowest costs.

Article (3):

1. The Rules shall apply to all Government Entities wishing to contract to secure Goods and Services based upon Revenue Sharing.
2. No Government Entity may enter into a Contract except in accordance with the provisions of the Rules. Any Contract entered into in contravention thereof shall be void.
3. The Rules shall not apply to Private Sector Participation (PSP) projects and contracts.

Article (4):

Pursuant to the GTPL, the Regulations, and the applicable laws and rules in the Kingdom:

1. Government Entities shall, when securing Goods and Services based upon Revenue Sharing, contract only with a Private Partner who is licensed to secure the Goods

and Services that are the subject of the Contract in accordance with the applicable laws and regulations.

2. Securing Goods and Services from the Private Partner based upon Revenue Sharing shall be subject to the principles of publicity, transparency, integrity, and equal opportunity.

Article (5):

Pursuant to the provisions of the Rules, a Government Entity may contract with the Private Partner to secure Goods and Services based upon Revenue Sharing, whether fully or partially, in accordance with the following thresholds and criteria:

1. The term of the Contract shall not exceed (5) years. However, it may be extended in Contracts the nature of which requires it, upon an approval of the MoF without prejudice to the provision of Paragraph (3) of Article (3) of the Rules.
2. The procurement shall involve any of the following:
 - a. The usufruct, lease, or licensing, of governmental assets to the Private Partner to be able to secure the Goods and Services being procured to the Government Entity subject to the provisions of the applicable laws; or
 - b. granting the Private Partner some Intangible Rights related to the provision of Public Services that are exercisable by the State exclusively in accordance with the relevant legal provisions.
3. The intended source of revenue shall not be mainly paid by the State.
4. Without prejudice to the provision of Paragraph (3) of this Article, and except for minimum usage guarantees (if any) relating solely to the Government Entity usage, the Contract shall not include the provision of any type of guarantees or credit support by the State in respect of the level of usage of the Goods and Services being procured.

Article (6):

The Government Entity shall, prior to tendering the procurement to secure Goods and Services from the Private Partner based upon Revenue Sharing, undertake the following:

1. A feasibility study along with a comprehensive analysis from a technical, financial, organizational, regulatory, and any other perspective, and determine the most appropriate contractual option to achieve the developmental objectives of the State, and the economic feasibility of contracting based upon Revenue Sharing, provided that the study shall include the following:
 - a. Determining the technical conditions and specifications for the Goods and Services to be secured in a detailed, accurate and clear manner, and considering the approved standard specifications or international standards in matters that do not have approved national specifications.
 - b. The needs assessment for the Contract and the intended objectives of it in line with the Government Entity's strategic objectives and priorities.

- c. Determining the financial, human, and technical resources necessary to secure Goods and Services, and financing methods.
 - d. Assessing the expected effects of the Contract in all aspects (including social, economic, etc.), and determining the technical requirements, licenses and permits necessary to implement the Contract.
 - e. Evaluating the main risks of the Contract and the mechanism of their distribution among the parties to the Contract.
 - f. Studying alternatives and available contracting options, conducting benchmarking according to international best practices and developing a Public Sector Comparator (PSC) study.
 - g. Testing the local and international market and determining the extent of the ability and the desire of the potential bidders to implement the Contract.
 - h. The initial proposed Revenue Sharing Formula, including the projected Revenue, and the minimum of the Revenue Sharing ratio for the Government Entity.
 - i. A draft of the Contract including the main terms and conditions of the Contract, a clear description of the contractual relationship and definition of the Goods and Services to be secured by the Private Partner, their Beneficiaries, and the criteria for matching them to the needs of the Beneficiaries.
2. Coordination with the Non-Oil Revenue Development Centre in the phases of the feasibility study, signing or renewing Contracts.
 3. The Government Entity shall take the necessary procedures to maintain the confidentiality of the minimum of its Revenue Sharing ratio.

Article (7):

The Portal shall include a tender mechanism commensurate with the nature and procedures of tendering the Contract to secure Goods and Services from the Private Partner based upon Revenue Sharing.

Article (8):

1. Without prejudice to the provisions of the GTPL and the Regulations, the tender documents shall include, at a minimum, the following:
 - a. Information and data related to the offered Goods and Services in accordance with the provisions of the GTPL and the Regulations.
 - b. A statement of the information and data required to be submitted in the technical and financial proposals, and bids' evaluation criteria.
 - c. A statement of whether it is required from bidders to provide any form of bonds and their calculation mechanism.
 - d. A statement on whether a final negotiation phase with bidders will be conducted, specifying the elements of negotiation, and whether a best and final offer (BAFO) round may be conducted.
 - e. A draft Contract, aligned with the requirements of the feasibility study, and tender documents.

2. The tender documents shall include the instructions and conditions of the tender and describe its stages and procedures, and shall include the minimum Revenue Sharing ratio for the Government Entity (if any).
3. The Government Entity may include in the tender documents a requirement that the Private Partner set up a company to implement the Contract, and the tender documents may indicate the provisions for setting up such, including the time frame for establishment and the minimum capital without prejudice to the provisions of the Companies' Law.
4. Before publishing the tender, the Government Entity shall present the feasibility study and tender documents to the MoF to obtain approval of the initial proposed Revenue Sharing Formula.

Article (9):

1. The Government Entity shall tender the procurement to secure purchases of Goods and Services from the Private Partner based upon Revenue Sharing after the approval of the Head of Government Entity (or to whom he delegates), in accordance with the provisions of the GTPL and the Regulations.
2. The procurement to secure purchases of Goods and Services from the Private Partner based upon Revenue Sharing shall be tendered through any available tendering method in accordance with the provisions of the GTPL and the Regulations.
3. A Government Entity shall carry out Pre- or Post-Qualification for securing Goods and Services from the Private Partner based upon Revenue Sharing.

Article (10):

1. The technical proposal shall include the technical, administrative, and financial capabilities, along with the practical experience of the bidders reflecting their ability to fulfil the contractual obligations in proportion to the nature and size of the Contract.
2. The financial proposal shall include the proposed Revenue Sharing Formula in accordance with the provisions of Article (12) of the Rules.

Article (11):

Subject to the provisions of the GTPL and the Regulations, the Government Entity shall undertake the following:

1. Verifying the completeness of the submitted bids and their satisfaction of the information and data to be submitted therein in accordance with the tender documents.
2. Evaluating bids according to the criteria specified in the tender documents, taking into account, at a minimum, the following:
 - a. The technical and financial ability of the bidder to implement the Contract.
 - b. The Revenue Sharing Formula and Revenue Sharing ratios' details.
 - c. The Net Present Value under the Contract, and the proposed Value for Money.

- d. Risk allocation and management plan.
3. Evaluating the Revenue Sharing Formula against the developed Public Sector Comparator (PSC) to test the proposed Value for Money and assumptions of technical and financial ability to implement the Contract in order to identify the following:
 - a. whether Value for Money is achievable through Revenue Sharing.
 - b. whether the preferred bid results in the best Value for Money when compared with the other bids and the Public Sector Comparator (PSC).
4. The Government Entity may conduct a final negotiation phase with one or more bidders after the initial evaluation of bids to achieve the best Value for Money and determine the preferred bidder, provided the following shall be taken into consideration:
 - a. Formation, pursuant to a decision of the Head of the Government Entity or his delegate, of one or more negotiation committee(s) of experts, provided that one of the members shall have legal qualifications.
 - b. The members of the committee shall not be less than (3) in addition to its chairman, and that it shall be reconstituted every (3) years.
 - c. The formation decision shall stipulate the appointment of a deputy to replace the chairman of the committee in his absence.
 - d. Negotiations shall be confidential.
 - e. Dealing with proposals in a manner that ensures that their contents are not disclosed to other bidders.
 - f. Any of the parties to the negotiations shall not disclose any technical or financial information related to the negotiations to any third party.
 - g. A person shall not simultaneously chair the negotiation committee and have the authority to decide on tender awarding; chair the proposal opening or review committee; nor hold membership in all committees.
5. The Government Entity may request the bidders to participate in a best and final round of bidding (BAFO) to determine the preferred bidder, provided that this is stipulated in the tender documents.

Article (12):

1. When assessing a Revenue Sharing Formula, the following shall be taken into consideration:
 - a. The type and nature of the contractual relationship and the complexity of executing the Contract.
 - b. The financial obligations of both the Government Entity and the Private Partner when executing the Contract, provided that, in all cases, the Private Partner shall bear the capital expenditures and the operational expenditure of the Contract.
 - c. The key risks under the Contract and their allocation basis, including the proposed risk allocation matrix and risk mitigation strategies.
 - d. The level of innovation required to execute the Contract.
 - e. The nature and degree of importance of the Goods and Services being procured to provide Public Services.

- f. The methodology by which the price of the Goods and Services is set without prejudice to the relevant legal provisions.
2. The matters that shall be stated in the Revenue Sharing Formula shall include, at a minimum, the following:
 - a. The projected Revenue, and the Revenue Sharing ratios.
 - b. The key performance indicators (KPIs), penalties, remedial actions, exit policies and the impact in the event of failing to meet such.
 - c. The minimum amount of the Private Partner's contribution that shall be comprised of local content pursuant to the provisions of the GTPL and the Regulations.
3. The final proposed Revenue Sharing Formula of the preferred bidder shall be submitted to the MoF for approval before signing the Contract.

Article (13):

The power to decide on or cancel tenders to secure Goods and Services based upon Revenue Sharing shall rest with the Head of the Government Entity. The Head of the Government Entity may delegate such powers, in accordance with the provisions of the GTPL and the Regulations.

Article (14):

The tender shall be cancelled, at any time prior to signing the Contract, in the cases specified in the GTPL. In such case, the fees for the tender documents and the provided bonds shall be returned to the bidders, in accordance with the provisions of the GTPL and the Regulations.

Article (15):

1. The Contract must include, at a minimum, the following:
 - a. The nature and scope of the Goods and Services that the Private Partner must secure and the conditions for their provision.
 - b. The responsibility for obtaining necessary licenses, permits and approvals for the implementation of the Contract.
 - c. Determining the selling price of the goods or the fees for providing the service on which the Contract is based, the bases and rules for such determination, and for adjusting the price by increase or decrease, and how to deal with inflation rates, if necessary.
 - d. The Revenue Sharing Formula and its agreed ratios between the parties to the Contract, and the mechanism for collecting Revenues resulting from it in accordance with the provisions of the State Revenue Law.
 - e. The performance standards and KPIs, quality assurance methods, control and supervision tools, and financial, administrative, and technical follow-up for the implementation of the Contract.
 - f. Subject to the provisions of Article (19) of the Rules, regulating the right of the Government Entity to amend the terms and conditions of the Contract, and specifying the principles and mechanisms of compensation for such amendment.

- g. The required types and amounts of insurance, implementation risks, implementation guarantees issued in favour of the Government Entity, and the provisions and procedures for their recovery.
- h. Determining the basis for risk allocation between the parties to the Contract, such as risks associated with change in the applicable laws and regulations and the like, or risks associated with force majeure, and the prescribed compensations, as the case may be.
- i. Subject to the provisions of Article (20) of the Rules, determining the term of the Contract, cases of early or partial termination, and the rights of the parties related thereto, and cases in which the Government Entity has the right to unilaterally terminate the Contract, and the financial obligations resulting from the use of such right.
- j. Determining the ownership and nature of the assets and intellectual property rights resulting from the Contract and determining the related obligations of the parties thereto after the Contract termination or expiration.
- k. Knowledge transfer provisions, and training of the Government Entity's personnel or of a successor of the Private Partner in the implementation of the Contract.
 - 1. Any other matter required by the Rules.
- 2. The Revenue Sharing Formula may include a bonus element in case the KPI targets are exceeded by the Private Partner, provided that such bonus is proportional to the additional benefit achieved for the Government Entity or the Beneficiaries.
- 3. In accordance with the provisions of the GTPL and the Regulations, the Contract may include provisions on penalties for delay, liquidated damages, or the reimbursement for breaching any contractual obligations by either party. The Contract shall set out the mechanism for calculating the same.
- 4. Without prejudice to the provision of Paragraph (3) of Article (12) of the Rules, Government Entities shall undertake to present their Contracts which term exceeds (1) year, or the projected Revenue from which amounts to (5) million Riyals or more, to the MoF to be reviewed from financial aspect before signing thereof in accordance with the provisions of the GTPL and the Regulations. The MoF shall review the Contracts within (15) working days from the date of receipt thereof. The provision of this Paragraph shall not apply to entities appropriation in the state's general budget.

Article (16):

- 1. The Head of the Government Entity, or whomever he delegates in accordance with the provisions of the GTPL and the Regulations, may grant the Private Partner the following rights:
 - a. Collecting Revenues, directly for its benefit, from the Goods and Services provided in accordance with the Contract. The Contract shall set out the terms related to the same.
 - b. Collecting public Revenues related to the Contract, including fees, taxes, and penalties, for the benefit of the State's Treasury. The Contract shall set out the

related controls and mechanisms for transferring the revenues to the State's Treasury, in accordance with the State Revenue Law.

2. All due Revenues shall be collected on time and in accordance with the forms and methods specified by the State Revenue Law, provided that the Private Partner shall bear the risks of collecting them in the event that it undertakes the collection process.

Article (17):

1. The Private Partner may not subcontract a third party to undertake any work related to the Contract without obtaining the prior written approval of the Government Entity in accordance with the provisions of the GTPL and the Regulations.
2. In all cases, the Private Partner shall remain the responsible party to the Government Entity for the implementation of the Contract in accordance with its terms and conditions.

Article (18):

The Private Partner may not assign, in whole or in part, the Contract to a third party without the prior written approval of the Government Entity and the MoF in accordance with the provisions of the GTPL and the Regulations.

Article (19):

1. The Government Entity may, in accordance with its actual needs or the public interest, modify the terms and conditions of the Contract, provided that such does not change the general nature of the Contract, wherein it results in the creation of a new contract.
2. Upon prior approval of the MoF, the Contract parties shall have the right to reconsider the agreed ratios of the Revenue Sharing in a way that supports the work and achieves financial sustainability from the Contract, provided that it does not substantially affect the Value for Money of the Contract or its economic balance.
3. The Contract shall specify the procedures for amending the Contract, the provisions for sending notifications and their duration, the effects of the modification, the amount of compensation if any, to which the Private Partner is entitled and the mechanism for calculating it.

Article (20):

1. The Government Entity shall terminate the Contract in the following cases:
 - a. If it is established that the Private Partner has, personally or through others, directly or indirectly, bribed an employee of the Government Entity; obtained the Contract through bribery, fraud, deceit, forgery, or manipulation; or engaged in any such acts in the course of executing the Contract.
 - b. If the Private Partner becomes bankrupt or has been dissolved or liquidated.
 - c. If the Private Partner assigns the Contract without the prior written approval of the Government Entity and the MoF.

2. The Government Entity may terminate the Contract in the following cases:
 - a. If the Private Partner delays commencement of the Contract than the time specified for this under the Contract, procrastinates in executing the Contract, or violates any of the Contract's terms and conditions, and the Private Partner fails to rectify the situation within fifteen (15) days from the date of receiving such written notification.
 - b. If the Private Partner breaches its material contractual obligations specified in the Contract or fails to achieve the agreed level of performance, after being notified in writing of such a breach and not rectifying the situation within fifteen (15) days from the date of receiving such written notification.
 - c. If the Private Partner subcontracts a third party without the prior written approval of the Government Entity.
3. The Government Entity may terminate the Contract if public interest so requires, or if termination is agreed upon with the Private Partner, upon the MoF's approval, in accordance with the provisions of the GTPL and the Regulations.
4. The Contract shall define termination procedures, the provisions for sending notices and their periods, the effects of termination, and the compensation to which each party shall be entitled and the mechanisms for calculating it.
5. Upon terminating the Contract, a tender may be held for the remaining part through the same tendering process in accordance with the provisions of the GTPL and the Regulations.

Article (21):

1. The Contract shall be subject to the provisions of the GTPL, the Regulations, and other applicable laws in the Kingdom that do not contradict the provisions hereto, including provisions in relation to dispute resolution.
2. The Government Entity may, after the Minister's prior written approval, agree to resort to arbitration in accordance with the provisions of the GTPL and the Regulations.

Article (22):

Anyone who works in the Government Entity or was a contractor or collaborator with it or has access by virtue of his/her position or work to confidential information or possess documents that are not authorized to be published, shall maintain confidentiality, and not disclose the same, except as permitted by the GTPL and the Regulations; and shall take necessary measures to protect the confidentiality of the information and documents.

Article (23):

1. No one who works in the Government Entity or was a contractor or collaborator with it or who participates in the activities linked to the tender of securing Goods and Services from the Private Partner based upon Revenue Sharing or has a direct or indirect impact on the tender process, at any stage, shall have any personal

interest or benefit, directly or indirectly, in the Contract or for those with whom the worker or the contractor is related up to the fourth degree.

2. In the event of any conflict of interest, the conflict shall be disclosed immediately by the person in accordance with the provisions of the GTPL and the Regulations, and he/she shall refrain from participating in any action or voting on any decision related to such until the conflict of interest ends.

Article (24):

1. The Government Entity shall enter into a service level agreement (SLA) with the Private Partner to organize the work of the Contract and define performance standards and indicators to ensure the quality of work.
2. The Private Partner shall provide the Government Entity with a quarterly financial report on the results of the Contract implementation, provided that the report is approved by an external auditor, appointed with the approval of the Government Entity, and that the report includes the total financial Revenues generated from the Contract and all financial dues for each party, bearing in mind that the Private Partner shall bear the external auditor's fees.
3. The Private Partner shall provide all information, documents and reports required to enable the Government Entity to monitor the execution of the Contract and facilitate the authorized representatives of the Government Entity to perform the required tasks to monitor the Contract including auditing accounts, transactions, and statements, and reviewing the financial Revenues generated from the Contract and all financial dues for each party. The Contract shall specify the terms and conditions related to the same.
4. The Rules shall not prejudice the competence of the competent government bodies - each within its jurisdiction - to exercise coordination, monitor, supervision, and continuous and direct follow-up to all stages of securing Goods and Services from the Private Partner based upon Revenue Sharing.

Article (25):

Without prejudice to the provisions of any criminal liability, any person who violates any provision of the Rules, the GTPL or the Regulations shall be subject to disciplinary action, in accordance with the provisions of the GTPL, the Regulations, and the relevant laws. The Government Entity shall have the right to initiate a civil lawsuit against the violator, if necessary.

Article (26):

Government Entities may contract with one another through direct agreement to secure Goods and Services based upon Revenue Sharing, provided that the other Government Entity, that is acting as if it was a Private Partner, shall undertake the implementation of the Contract itself.

Article (27):

Companies contracting on behalf of the Government Entities to secure Goods and Services from the Private Partner based upon Revenue Sharing shall comply with the provisions of the Rules.

Article (28):

1. If there arises a need for excluding any of the provisions of the GTPL when implementing the Rules, the Government Entity shall submit the same to the Minister to study the matter for a decision, after defining the subject of the exception and its justifications, provided that the period of such exemption shall not exceed three (3) years.
2. If there arises a need for excluding any of the provisions of the Rules, the Government Entity shall submit the same to the Minister to study the matter for a decision, after defining the subject of the exception and its justifications.
3. In all cases, the MoF may review the Rules and submit an evaluation of their implementation, and its proposals - in this regard - to the Minister to approve any amendment thereto, as needed.

Article (29):

1. The Minister (or to whom he delegates) may approve mandatory or indicative forms of the Contracts, the tender documents, the Pre- or Post-Qualification documents, the Private Partner performance assessment, and any other document required by the nature of the Contract.
2. The Government Entity Shall use the approved mandatory forms of Contracts, tender documents, Pre- or Post-Qualification documents, Private Partner performance assessment, and any other document required by the nature of the Contract.

Article (30):

Where the Rules are silent, provisions of the GTPL and the Regulations shall apply.

Article (31):

The Rules shall be published in the Official Gazette and shall be effective from the date of its publication.