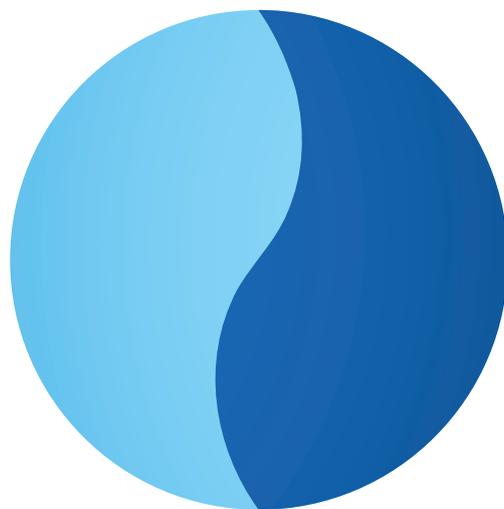


**Guide to**  
**Contractual Arrangements**  
**between**  
**Governmental & Quasi-Governmental Entities**  
**And**  
**Kuwait Financial Centre K.P.S.C.**  
**(“Markaz”)**



**September 2020**

## About this Guide

Kuwait Financial Centre K.P.S.C. “Markaz” has a stated Mission to participate in the sustainable growth and development of the national economy.

One contribution is to participate in the procurement of advisory and outsourcing services to the government and quasi-government institutions.

This guide provides a brief of the capabilities of Markaz in procuring such services to government and quasi-government institutions.

## About Kuwait Financial Centre K.P.S.C.

Kuwait Financial Centre K.P.S.C. “Markaz” was incorporated on 17 August 1974 as a closed shareholding company. In 1997, the Company’s capital was increased to KWD 40 million; and in April of the same year, the Company was listed on Boursa Kuwait. The Company’s capital as of 30 September 2020 is KWD 48,080,174.700. The Company’s strategy and business model were restructured to become a full-fledged investment company offering investment products and portfolio services in Financial Securities, Real Estate and alternative investments; in addition to Investment Banking advisory, Capital Markets services, infrastructure projects, and supporting the capabilities of the government and quasi-government institutions.

## Licensed activities to Kuwait Financial Centre K.P.S.C. by the Capital Markets Authority and the Central Bank of Kuwait

Markaz is registered with the CMA under No. AP/1974/0012; and is awarded license to practice the following Licensed Activities:

- Collective Investment Scheme Manager
- Investment Portfolio Manager
- Securities Broker not registered with the Exchange
- Investment Advisor
- Subscription Agent
- Custodian
- Market Maker

Markaz is also subject to the supervision of the Central Bank of Kuwait with respect to the Lending activity.

## What can Kuwait Financial Centre offer to meet the needs of a Public Sector Entity?

Kuwait Financial Centre K.P.S.C. can offer the following services:

### 1. Asset Management Services

Markaz acts as Investment Advisor by formulating a comprehensive investment program based on determining return objects versus risk parameters, designing and implementing a suitable asset allocation plan among various asset classes and markets.

Public Sector entity wishing to maximize returns on its available capital can invest through a program comprising any one, or a combination of, the following:

- Investment portfolios focused on different types of financial securities in different markets; and/or
- Investment portfolios in real estate, private equity and other alternative investments; and/or
- Investments into collective investment schemes and investment funds managed by Markaz.

### 2. Consulting & other outsourcing services

Markaz provides advisory and other outsourcing services encompassing:

- Financial advisory and restructuring.
- Operational advisory and restructuring.
- Management consultancy.
- Sector studies.
- Strategy reviews and updates.

- Governance Framework & Policy reviews and updates.
- Legal & administrative: establishing joint ventures, special purpose vehicles and others to serve the objectives of the Public Sector Entity, within the legal framework of the Public Sector Entity.

### **How can a Kuwaiti Public Sector Entity buy services from Kuwait Financial Centre K.P.S.C.?**

Procurement of services by Public Entities are subject to the Tender Law 49/2016 as amended by Law 74/2019 and its executive regulations 30/2017 (the “**Tender Law**”). The Tender Law regulates public and limited bids or solicitations.

Public Entities include Ministries, government departments, public authorities and institutions with attached or independent budget such as: the Public Institute for Social Security (PIFSS) per Emiri Decree 61/1976, the Public Authority for Minors Affairs (PAMA) per Law 67/1983, the Kuwait Fund for Arab Economic Development per Law 25/1974, the Kuwait Investment Authority (KIA) per Law 47/1982, and Kuwait Industrial Bank (KIB) per its Articles of Association and others.

Noting that few Public Entities are not subject to the Tender Law pursuant to their legislative regulations.

Public Entities, within the context of this Guide, are those allowed by their own laws to invest money and/or procure appointment of service providers to assist with investments.

#### **I. Limited Solicitation Procedures**

Markaz is registered with and qualified by the Central Agency for Public Tenders (“**CAPT**”) to participate in public and limited bids, and public and limited solicitations.

**Limited Solicitations** are permitted in the Tender Law and apply if the selection of the service provider is based on the quality of the service provider(s) and their technical capabilities, then the competition will be only among those qualified short list for the same scope of services. Selection of the winning bidder will then be based on the best monetary proposal.

It is standard that Public Entities carry out Limited Solicitation procedures among a short list of qualified and selected service providers with the prior approval of the CAPT in accordance with the Tender Law, exempting the Public Entity from undertaking a public bid, to provide the same scope of Asset Management Services and Consulting & other outsourcing services.

Markaz is eligible to participate through **Limited Solicitations** based on its business activities, quality of its deliverables and illustrious track-record to provide asset management and advisory services.

#### **II. Establishing Your Own Service Provider**

Public Entities may elect to participate directly in the incorporation of a joint venture (“**JV**”). Markaz can assist the Public Entities in establishing such JV and may also participate as shareholder in the JV and/or arrange to find interested parties to participate pursuant to their relevant expertise and the perceived benefit or added value they could bring to the JV. Markaz can undertake the legal and administrative procedures for the establishment of the JV.

The Public Entity would be able to contract directly with the JV through:

- The Direct Contracting allowed under the Tender Law if the fees payable to the JV is less than KWD75,000 per annum; and/or
- The Limited Solicitation with the prior approval of the CAPT.

## Benefits of outsourcing to a JV

The JV becomes the preferred outsourcing partner of choice to the Public Entity, with the clear benefits of bringing technical and financial expertise, efficiency, good governance, transfer of knowledge and capacity building.

1. Private sector mind-set: the JV can recruit and retain experts in the required fields having the work experience in the private sector, bringing local, regional or international knowledge and experience.

This can benefit in:

- Transfer of knowledge to the Public Entity's personnel;
  - Localization of knowledge and Building Capacity within the JV.
2. Governance: outsourcing will allow the Public Sector Entity to segregate functions leading to proper governance. This would result in:
    - Internal Controls
    - Efficiency and speed of execution
    - improved performance and delivery of results
    - Accountability

## Type of Supervision per ownership level in the JV

Depending on the level of its ownership in the JV, the Public Entity will be subject to either precedent and/or subsequent supervision by the Audit Bureau as per certain provisions of the Law No. 13/1964 on organizing the Audit Bureau, and Law No. 1/1993 on the Protection of Public Funds:

<b>Audit Bureau Law 13/1964</b>	
Ownership in the JV	Type of Supervision
50% or more	Precedent and Subsequent
	Audit Bureau Team seconded to the entity.
Less than 50%	Not applicable

<b>Protection of Public Funds Law 1/1993</b>	
Ownership	Type of Supervision
25% or more	Subsequent
	Reporting on internal and external investments. Ad hoc requests by Audit Bureau.
	Any investment made by the JV in excess of KWD100,000, will be subject to a bi-annual reporting to Minister, onwards to Audit Bureau, onwards to the Speaker of the Parliament.
Less than 25%	Not applicable

## Guide to assessing solicitations and bids by governmental and quasi-governmental institutions, pursuant to international practices

Contracting of advisory services can be segregated in 4 different stages:



### Request for proposal

Globally, public entities have laid down certain minimum standards for procurements based on the monetary value. The policies and procedure revolve on the core procurement principles like fairness, effectiveness, quality, economic benefits and transparency<sup>1</sup>. With the set fundamental principles, the public bodies most likely follow a fit-for-purpose approach depending on the size and the intricacies involved in the project in addition to observing the value for money principle. The RFP is one of the methods of solicitation, it is used for procurements that cannot be expressed quantitatively and qualitatively<sup>2</sup>.

### How to prepare a Request for Proposal?

- **Background/ Introduction:** Public entities need to introduce themselves by providing useful background information about themselves. This includes information like nature of business, product or service it offers, competition, and location.
- **Project Goals and Scope of Services:** The public entity needs to detail the project and the goals it expects to accomplish. Being specific is important by outlining individual tasks and criteria involved.
- **Elements of Proposal:** Outlining clearly and specifically elements that bidders need to include in the proposal is crucial. Including a checklist would be a good idea.
- **Schedule of required services:** Including a detailed schedule is advised, so vendors can meet the prescribed deadlines. Providing a window for vendors to ask questions regarding the project aids in aligning the vendor with the requirements of the public entity.
- **Timeline:** Indicating a preferable timeline for completion of the project helps the vendor plan better. If the public entity is flexible with time, it still can indicate the tentative timelines.
- **Evaluation Criteria:** Public entities can outline their expectations, which will help eliminate vendors who don't meet them. Evaluation criteria needs to be designed in a way to identify the best indicators of impressive candidates. Samples of past work, proven success record with companies in similar industries, expertise and technical skills, and cost of services could be some of the suggested indicators.
- **Budget:** The public entity can choose to disclose a budgetary range, however it is not mandatory and entities can keep it open ended to receive competitive bidding from the vendors.
- **Time and Place of Submission of Proposals:** The public entity needs to clearly mention the deadline and place to submit the proposal.

<sup>1</sup> Commonwealth of Australia, Organization for Economic Co-operation and Development (OECD).

<sup>2</sup> United Nations, 2019

## Key success Factors:

**Cultural aspect:** For successful implementation of the projects, it is important to be sure if the bidder is a good fit for your culture and expectations. A good example of addressing culture aspect is to float the tender for local bidders and allow foreign bidders in partnership with a local firm.

**Technical aspect:** The public entity needs to provide elaborate description on the technicality of the project to ensure that the most competent bidders participate in the tender.

**Strategic Aspects:** Effective RFPs should reflect the strategy and short/long-term business objectives, providing detailed insight upon which bidders will be able to offer a matching perspective

## Financial:

**Direct Benefit:** A RFP should encourage competitive bidding; this would result in direct benefit for the public entity, in terms of attracting best prices for completion of the project.

**Indirect Benefit:** Though a lot of attention is given to lower cost, but by not only judging a bidder based on the pricing, and also evaluating the additional support that bidder can provide in terms of technical expertise which indirectly could lead to cost savings for the public entity should also be looked into.

## Invite response to RFP:

In order to invite response to the RFP, the public entity can publish the RFP on its website, publish the tender notification in in Kuwait Al-Yawm, leading newspapers, and email the RFP invitation to relevant stakeholders. Prequalification is a typical process followed in most countries, though optional, it is practiced for projects of high value proposition and entailing high technical capabilities<sup>3</sup>. The evaluation is based on compliance with clearly identified minimum requirements, which essentially assess the capability of the vendor to accomplish the project in a satisfying manner. At this stage, entities' focus on the competence and the advisory capacity of the vendor. Applicants are prequalified if they meet the set forth criteria which in most instances include the vendors past experiences (similar projects conducted and implemented), financial capacity (turnover, liquidity ratios), legal and regulatory requirements, institutional and manpower capability. Sometimes certain requirements fall in to the mandatory principles and are usually rated as pass/ fail.

## Evaluation:

### Technical and Financial Proposal Evaluation

Public entities usually ensure comparability among the vendors/applicants, follow a set template based on the complexity of the project. The technical evaluation is objective, in most cases there are pre-defined components with numerical scores. Scores/points are used to assess the non-price/qualitative attributes<sup>4</sup>. One of the most commonly used evaluation methods is the Quality and Cost Based selection (QCBS) which involves evaluating the technical proposals, followed by evaluation of the financial proposals. The method involves a weighted criterion considering the technical and financial factors (80%-20%, 70%-30%, 60%-40%, or 50%-50%) relevant to the project. In case of projects that emphasize on high quality, a Quality-Based Selection (QBS) is used which involves only evaluating the technical proposals<sup>5</sup>. And the qualified vendor is then requested to submit financial proposal.

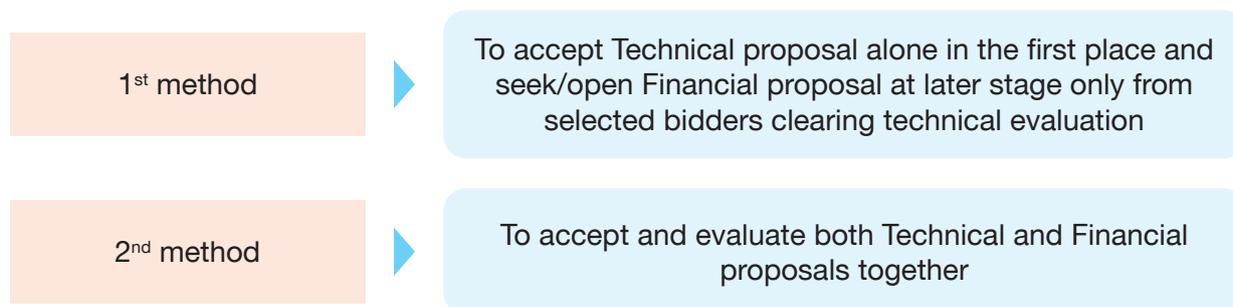
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<sup>3</sup> Asian Development Bank, 2018

<sup>4</sup> World Bank, 2016

<sup>5</sup> Alternatively, the RFP might require submission of both technical and financial proposals (uses two sealed envelope system) in such instances only the financial proposal of the highest ranking applicant is opened for evaluation.

## Two methods to evaluate the RFP response



There are few other selection methods used for procurement of services, the public entity carefully chooses the selection method based on the level of quality required for the specific project.

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## Other selection methods

Method	In detail
Fixed Budget Selection	Firm with the highest technical score wins the tender provided that its financial proposal is within the specified budget.
Least-Cost Selection	Firms evaluated for technical qualification. The qualified firm with the lowest price wins the tender.
Consultants' Qualifications Selection	Evaluated based on consulting firms' qualifications, reflected in amplified expressions of interest submitted by firms.
Single-Source Selection	Based on a single source/ direct contracting, considered only for exceptional circumstances and generally for small assignments.

Source: Asian Development Bank, World Bank.

While quality is the primary factor in advisory services, price is an important evaluation criterion too, but the weight of the price depends on the evaluation methodology chosen. Typically, only those financial proposals with a minimum threshold are evaluated. As a best practice in a competitive landscape, maximum score is allocated to the lowest evaluated proposal and the scores of others are based on the inverse proportion i.e., dividing the lowest priced proposal by the price of the other proposals<sup>6</sup>. The evaluation process is then followed by computing a combined final score (technical and financial).

## Project Award:

The contracts shall be awarded to the applicants with the highest combined score meeting the standards of the technical and financial requirements and affirming the value for money principle. Most countries reserve the right of the Public Entities to negotiate with the best valued applicant on the basis of technical and financial evaluation.

<sup>6</sup> UN procurement division evaluation methods, 2009; Islamic Development Bank, 2019