

Legally Yours



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Transparency in the Water Sector

For Jordan, as well as neighboring countries, the challenge of getting drinkable water to end users accompanied with the need to raise quality levels have led governments to reconsider their position. The accumulated pressure has encouraged local authorities to consider options for commercialization, privatization and contracting in and out some or all of their services. Governments in the region, at different levels, are finally considering the private sector participation based on partnership rather than conflicting interests. Moreover, local authorities and central governments realized the need to introduce competition amongst private sector contractors, to ensure quality of delivered services.

As controversial as it may seem, many politicians in the Middle East and North Africa thought of transparency as an academic term and it took them a while to find actual implementations of the term. To provoke private sector participation, a country need to implement many changes starting with its own household and ending with the way it welcomes visitors. Since water and sanitation projects tend to be long termed ones, PSP has been reluctant to join in especially when revenues and investment payback are spread over an average of 15 years (sometimes more).

For both settled and "to settle" countries, water is a hot issue which governments can not overlook. The increasing bill of water services should invoke governments to revise their policies. Whether for expansion, maintenance or upgrade of service quality, authorities should look for financing alternatives. When talking about access to finance and effectiveness, the private sector may play an essential role when given incentives in a competitive work environment.

It is imperative to know that world players in water contracting and operating are limited. The question of how to bring more of them into a country depends on how transparent the water sector is. Transparency involves

several household issues starting with:

- **Finance planning.** In the same way that transparency may help with the funding process, clarity can also play a key role, by identifying the limitations of the plan or strategy developed and expressing how far along the financing activities have come. Government planners should identify a clear path for finance plans. If they fail to do so, that are in an early stage should clearly be identified as such, since these preliminary efforts often contain gross assumptions and placeholders that could be very different from what is in the final form. In Jordan, bulk water from Disi came as a project of national importance. Although categorized as such, the failure by government planners to best explore financing alternatives and thereafter deciding on applicable routes, the long awaited project took ten years till it was conceived through a clear cut tender. Vague approaches give way for misinterpretation of deeds and delay in execution sometimes at the cost of end users. Although most countries have their water agenda or policy, translation of such into viable formulas is rare in the region, and even when it crystallizes the process consumes more time than the private sector is willing to wait for.
- **Asset appraisal.** Although this may seem as a private sector term, it is well needed in water authorities and should be adopted by central governments. Bidders for an operating project along with financiers struggle when it comes to water, since they can not clearly evaluate the existing assets. From one side, the central government and water authorities do not always maintain an actual fixed and moveable asset evaluation. In consequence, negotiations about utilizing such assets either focus on taking it out of the formula, whereas the other attempts to force utilizing them, asking for unrealistic prices or charges.
- **Operational Information.** The poor quality of existing operational information and insufficient knowledge about the actual condition of the asset base makes it impossible for firms to decide whether to bid or not, as well as to formulate a credible proposal if they do bid. Where some governments pride themselves by being self sufficient, most of them fail to present an actual picture of their water operations.
- **Tendering.** It is understood that The arrangement chosen for private sector participation, the preparation process, the quality of existing operational and commercial information, the bidding process, and several other features of the privatization program controls the number of local

- and foreign private water companies interested in any concession or partnership. As much as the public sector renders clear cut details about a financial, technical and legal framework of a tender, the higher its percentage would be to attract private sector entities. Ambiguity, not only scares away possible bidders, but also shed doubts of corruption.
- **Political Support.** The lack of political support displays a major set back for invited participants in a tender. Provoked by profit, the private sector is not keen on adding a political risk on top of its operational hazards. A central government or water authority should have transparent goals for a project, and lobbying approval is something to be done prior to tendering. It is well claimed that the private sector grasps opportunities and does not develop them. Opposition may come at the level of officials, when an official campaigns on a promise to reduce tariffs as a promise for voters ... etc. From a legal prospective, if a partnership with the private sector requires several levels of ratifications or amendment of a legal text, this should be taken care of prior to setting a project for launch. Finally, many privatization attempts fail to reach their objectives due to social resistance. If a project affects a local community, this should be accounted for in the project documents. Many delays in project implementation are caused by local resistance, which in its turn frustrates contractors and operators ... and affects WATER well needed for our society!

(Abstract from a paper by the author: encouraging private sector participation/WLP)

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