

LAW ON PUBLIC-PRIVATE PARTNERSHIP AND CONCESSIONS

I. I. GENERAL PROVISION

The Subject of the Law

Article 1

This law regulates the conditions and manner for preparing, proposing and approving projects for public-private partnership, the entities in charge of and authorized for proposing and implementing public-private partnership projects, the rights and obligations of public and private partners, form and content of public-private partnership contracts with or without concession elements (hereinafter: public contract) and legal protection in public contract award procedures, conditions and manner of concession approval, the subject of concession, the entities in charge of and authorized for concession approval procedure, the termination of concession, protection of rights of parties participating in public contract award procedures, the establishment, status and the competence of the Public-Private Partnership Commission, as well as other issues of significance for public-private partnership with or without elements of concession or for concession.

Application of the Law

Article 2

All investments of publicly-owned funds in a joint undertaking with a private partner shall be regulated by the provisions of this law, as well as the relevant provisions of the law regulating public property.

Public-private partnerships conducted in accordance with specific rules of procedure of international organizations shall be regulated by the provisions of this law, except the provisions relating to the public contract award procedure.

Article 3

This law shall not apply to public-private partnerships with or without elements of concession if:

- 1) the establishment of a public-private partnership would require enabling access to the information whose disclosure would endanger the security of the Republic of Serbia;
- 2) such partnership was based on international contracts that the Republic of Serbia concluded with one or several states for the purpose of joint implementation or utilization of projects;
- 3) the subject of that partnership was the use of a public telecommunications network or the provision of telecommunications services.

Definitions

Article 4

Certain terms used in this law shall have the following meanings:

1) **Public-private partnership project** is a project which is prepared, proposed, approved and implemented based on one of the public-private partnership models and consists of a series of interconnected activities taking place in a specific sequence for the purpose of achieving the identified objectives within a specified time period and within a specified financial framework which, in compliance with this law, has been approved as a public-private partnership project, with or without elements of concession.

2) **Contractual public-private partnership** is a model of public-private partnership in which the mutual relations between a public and a private partner are regulated by a public-private partnership contract.

3) **Public contract** is a contract on public-private partnership with or without elements of concession, concluded in written form between a public and a private partner, or between a public or a private partner and a Special Purpose Vehicle regulating the rights and obligations of the parties to the contract for the purpose of implementing a public-private partnership project.

4) **Institutionalized public-private partnership** is a public-private partnership based on the relations between a public and a private partner as founders or members of a joint undertaking which is in charge of implementing a public-private partnership project.

5) **Public infrastructure** is a facility which is publicly used or is made available for public use or public benefit (or the use and benefit of a group of entities which is freely accessible and which is defined in advance only in abstract terms) in any sector of public services or economy.

6) **A special purpose vehicle** is an enterprise that can be established by a private or a public partner for the purpose of concluding a public contract, and/or for the implementation of a public-private partnership project.

7) **A public body** is:

(1) a government authority, organization, institution or another direct or indirect budget beneficiary according to the law regulating the budget system and the budget, and organization for mandatory social insurance;

(2) a public enterprise;

(3) a legal person which performs also an activity of public interest, provided that one of the following conditions is fulfilled:

- that more than one half of members of the management body of such a person are representatives of public bodies;

- that more than one half of voting rights in the management body of such a legal person is owned by representatives of public bodies;

- that a public body is in charge of exercising supervision over the operations of such a legal person;

- that a public body owns more than 50% stocks/shares in such a legal person;

- that it is funded by more than 50 % by a public body.

(4) A legal person established by a public body which also performs the activity of general interest and which fulfils at least one of the conditions from item 7) subitem (3) of this article.

8) A **public enterprise**, for the purposes of this law, is any enterprise or undertaking which can exercise directly or indirectly a dominant influence on the public body on the basis of ownership over it, or on the basis of financial share in it or on the basis of the rules governing it. It is considered that a dominant influence exists when such parties, directly or indirectly, with respect to any enterprise or undertaking:

(1) own the majority of the subscribed capital, or

(2) control the majority of votes based on shares issued by such an enterprise or undertaking, or

(3) may nominate more than one half of the executive, management, and the supervisory boards of such an enterprise or undertaking.

9) A **public partner** is one or more public bodies, or a legal person who according to this law is in charge of approving the concession, which enters into a public contract with the private partner or the SPV, or one or more public bodies that are linked with the private partner through membership in some joint enterprise.

10) A **private partner** is a natural or legal person, national or foreign, with local or foreign share or without it, or a consortium of one or more such natural and legal persons which have been selected in a public procurement procedure or concession granting procedure and which have signed with the public partner a public contract, or which is establishing for that purpose an SPV, or which is establishing with the public partner a joint enterprise.

11) **The procedure for the selection of a private partner** is a public procurement procedure in compliance with the law regulating public procurement or granting of concessions in accordance with this law.

12) **The concession fee** is the fee payable by the concessionaire or grantor, in accordance with the public contract which regulates the concession.

13) **The public contract register** is a unique electronic data base which serves the purpose of recording and monitoring of realization of the public contracts which, according to this law, are implemented in the territory of the Republic of Serbia.

14) **The decision on the selection of the best proposal** is an act adopted by a public body, after evaluation of received proposals for public contract award, in accordance with the tender documents and criteria for the selection of the most favorable proposal.

15) **The bidder** is a legal or natural person which has submitted a bid in the public procurement procedure for public contract award, or in the process of granting a concession.

16) **The national commission** is the national commission for the protection of rights in public procurement procedures established in accordance with the law regulating public procurements.

17) A **self-initiated proposal** is a proposal of an interested person to the competent public body to undertake or implement a public-private partnership project with or without the

elements of concession, which is not submitted as a response to a public invitation by a contracting authority in the procedure of public contract award.

18) *An advisor* is one or more legal or natural persons with expertise necessary for the preparation, contracting and implementation of public-private partnership projects.

19) *Written or in written form* means any writ consisting of words or figures which can be read, copied or subsequently distributed. Such writs can include data transmitted or stored in electronic form.

20) *An applicant* is a party in the procedure which is submitting a request for the protection of rights.

Principles of Public-Private Partnership and Concessions

Article 5

The regulation of conditions, manner and procedures for the conclusion of public contracts is based on the following principles: the protection of public interest, efficiency, transparency, equal and just treatment, free market competition, proportionality, environmental protection and autonomous will and equality of parties to the contract.

When implementing a concession granting procedure, the concession granting authority is obliged, apart from the principles referred to in paragraph 1 of this article, in view of all participants in the procedure, to implement the principle of free movement of goods, the principle of free provision of services, the principle of prohibition of discrimination and the principle of mutual recognition.

The principles referred to in this article are used in the interpretation of provisions of this law.

Content of the Principles

Article 6

The principle of protection of public interest includes the obligation of the public body to ensure in the exercise of the rights of private persons that the exercise of these rights is not contrary to the public interest defined by the law.

The principle of efficiency includes the obligation to conduct the procedure of public contract conclusion and private partner selection within the periods and in the manner prescribed by this law and the law regulating public procurement, with the lowest possible procedure-related costs.

The principle of transparency includes the obligation of announcing the intention of concluding a public contract with or without elements of concession, the possibility for the bidder to have access to the data on the conducted public contract award procedure and similar.

The principle of equal and just treatment includes the prohibition of discrimination on any basis among participants in the procedure of public contract award and selection of the private partner, as well as the obligation for participants in the procedure for the selection of the public partner to have full and accurate information regarding the procedure, standards and criteria for the selection of the private partner.

No party participating in the procedure of selection of the private partner shall have any advantage over others in terms of time, information or access to authorities and persons in charge of public contract award procedure. All decisions must be made on the basis of published and objective criteria and forwarded to participants in the procedure with justification.

The principle of free market competition includes the prohibition of limitations of competition among participants and an obligation to accept participants with adequate technical, financial and other professional qualifications.

The principle of proportionality implies that every measure undertaken by a public authority or another person must be the minimum necessary measure and proportional to the public interest which is thereby protected.

The principle of environmental protection includes the principles defined by the law regulating environmental protection, such as: the principle of integrity, the principle of prevention and precaution, the principle of preservation of natural values, sustainable development, the polluter-pays principle and other.

The principle of the autonomy of will includes the freedom of parties to the contract, in accordance with this law, the law on contractual obligations, other laws and good management practice, to regulate their mutual rights and obligations according to their will.

The principle of equality of parties to the contract implies that mutual relations between the parties to a public contract are based on their equality and the equality of their wills.

II. PUBLIC-PRIVATE PARTNERSHIP

1. The Concept of Public-Private Partnership

Article 7

The public-private partnership (hereinafter: PPP), for the purposes of this law, is a long-term cooperation between a public and a private partner for the purposes of providing financing, construction, reconstruction, management or maintenance of infrastructure and other facilities of public interest and provision of services, of public interest, which may be contractual or institutional.

Important elements of public-private partnership refer to the following:

- 1) the subject of PPP, which may not be an exclusive commercial use of the asset in general use or other asset;
- 2) the form of PPP, which may be an institutional PPP or a contractual PPP, or as a concession that presents a special form of PPP in accordance with this law;
- 3) the obligation of the private partner to take over from the public partner the design, construction or reconstruction of public infrastructure or a facility of public interest, as well as the maintenance of public infrastructure or provision of services of public interest including one or more of the following obligations: financing, management and maintenance, for the purpose of providing services of public interest to final beneficiaries from within the competences of the public partner, or for the purpose of ensuring the necessary preconditions for the public partner for the provision of services of public interest within his competences, or provision of services of public interest from within the competences of the public partner to the final beneficiaries;
- 4) partial or full PPP project financing by the private partner;
- 5) that the public partner may, in view of obligations undertaken by the private partner, transfer to the private partner certain real rights, or grant a concession to the private partner, or pay moneys to the private partner for the obligations undertaken;

6) each partner undertakes responsibility for the risk which it can better manage or which it can affect, or risks are divided in a balanced manner, all for the purpose of ensuring optimal risk management for the duration of the PPP project, with the use of management, technical, financial and innovative capacities of the private partner, and by improved exchange of skills and knowledge between the public and the private partners;

7) the public partner may allow the private partner to perform commercial activities within the execution of the public-private partnership project, only if it is not possible in another manner to ensure the necessary level of cost-effectiveness in the implementation of the public-private partnership project and the return on investment.

In the case referred to in paragraph 1 item 5) of this Article, when the public partner transfers certain real rights to the private partner, an annotation shall be made in the register in which the data on real property and the rights over them are kept to the effect that these rights have been transferred for the purpose of implementing the public contract.

2. PPP Forms

2.1. Contractual PPP

Article 8

Parties to the contract shall regulate their mutual rights and obligations in the implementation of PPP projects with or without elements of concession by a public contract whose contents are prescribed in Article 46 of this law.

A public contract granting concession regulates the rights and obligations of the party granting concession and of the concessionaire in compliance with the provisions of this law and provisions of separate regulations regulating the area to which the subject of concession belongs.

Any issues related to public contracts which are not regulated specifically by this law shall be governed by the provisions of the law regulating contractual obligations.

2.2. Institutional PPP

Article 9

An institutional PPP is based on membership relation of the public and private partner in a joint undertaking which is in charge of implementing the PPP project, where this relation between the public and the private partner may be based on founders' shares in a newly established joint undertaking or on the acquisition of the equity share in or capital increase of the existing undertaking.

The founding and management rights are regulated freely between the members of the SPV in compliance with the law regulating the status of undertakings.

The public body initiates the private partner selection procedure in the manner prescribed by the provision of Article 26 of this law and prescribed by the provisions of this law regulating the concession granting procedure, by applying the criteria referred to in Article 21 of this law.

After the private partner selection procedure is completed, the public body and the selected private partner sign a contract on the establishment of a joint undertaking referred to in Article 15 of this law, for the purpose of implementing the PPP project.

The content of the contract referred to in paragraph 4 of this article is governed by provisions of the law regulating contracts and torts and the law regulating the status of undertakings.

The joint company referred to in Article 15 of this law is governed by provisions of the law relevant to the establishment and management of companies, and the provisions of the contract on establishment referred to in paragraph 5 of this article.

The law regulating privatization (put and call options) is not applicable to the disposal of shares or stocks in the joint undertaking in the manner defined in its foundation documents.

The provisions of this law regulating the registration of public contracts and supervision over their implementation apply also to public contracts on institutional PPP.

3. Concession

3.1. The Concept

Article 10

A concession, for the purposes of this law, is a PPP with the elements of concession in which a public contract regulates the commercial use of natural resources or assets in general use which are publicly owned or the performance of an activity of public interest which the competent authority transfers to a national or foreign person, for a specific period of time, under specially prescribed conditions, against the payment of a concession fee by the private or the public partner, with the private partner bearing the risk associated with the commercial use of the subject of concession.

Concession for public works, for the purposes of this law, is a contractual relation equal to the public procurement contract by which works are purchased in accordance with the law regulating public procurement, except for the fact that the fee for public works consists either of the actual right to commercial use of the works performed or of that right along with the payment.

Concession for services, for the purposes of this law, is a contractual relation equal to the contract for public procurement of services in accordance with the law regulating public procurement, if the fee for the provided services consists either of the actual right to commercial use or the provision of services or of that right along with the payment.

3.2. The Subject of Concession

Article 11

A concession may be granted for the purpose of commercial use of publicly owned natural assets, or goods in general use which are publicly owned, or for the purpose of performing an activity of general interest, especially:

- 1) for exploitation of mineral resources and other geological resources;
- 2) for specific activities within protected areas of nature, as well as for the use of other protected natural resources;
- 3) in the area of energy;
- 4) for ports;
- 5) for public roads;
- 6) for public transport;
- 7) for airports;

- 8) in the area of sports and education;
- 9) in cultural assets;
- 10) for public utility activities;
- 11) in the area of railroads;
- 12) for commercial use of cableways;
- 13) in the area of health care;

- 14) in the area of tourism;
- 15) and other areas.

Except for the procedural matters, any other matters of importance for granting concessions for a specific area or activity referred to in paragraph 1 of this Article may be regulated by a separate law regulating that area or activity.

4. Public Partner

4.1. Public Body and Its Competences

Article 12

Public bodies can initiate the procedure to implement a PPP project from within their competences.

Public bodies can enter into public contracts with any legal or natural person and to sign auxiliary or related agreements.

4.2. Public Body as the Concession Granting Authority - Grantor

Article 13

A public body can independently initiate a procedure for the implementation of a PPP project with elements of concession for the use of natural resources or assets in general use or performance of activity of general interest from within its scope of activity.

The concession granting authority can be:

- 1) the Government, in the name of the Republic of Serbia, when the public bodies and the subject of the concession fall within the competences of the Republic of Serbia,
- 2) the Government of the autonomous province, in the name of the autonomous province, when the public bodies and the subject of the concession fall within the competences of the autonomous province;
- 3) the assembly of the local self-government unit, when the public bodies and the subject of the concession fall within the competences of the local self-government unit, and
- 4) a public enterprise, or a legal person authorized by special concession granting regulations.

5. Private Partner

5.1. Legal and Natural Person

Article 14

Any national or foreign natural or legal person may participate in the procedure for the award of public contract.

Groups of companies may submit their bids or act as participants in the procedure. Public bodies do not have to ask from these groups of persons to have a specific legal form in order to participate in the procedure.

Of all the participants in the procedure whose bid has been evaluated as the most favorable one, a certain legal form shall be required after the award of public contract.

5.2. Special Purpose Vehicle

Article 15

SPV shall always be established in order to implement a public contract and it can participate only in the implementation of a PPP project for which it has been established, unless otherwise stipulated in the proposed PPP project or concession document.

The SPV shall be established according to the provisions of the law regulating the status of companies.

5.3. Consortium as a Participant in the Public Contract Award Procedure

Article 16

It is allowed to form consortia for the purpose of participation in the public contract award procedure, unless the public body implementing the procedure explicitly states otherwise in the tender documents.

If there are objective reasons for this, the public body may:

- 1) limit the number of consortium members or may introduce limits in terms of consortium structure and liability of its members;
- 2) limit the changes in the consortium structure after the pre-qualification stage, such as replacement of members, mergers of consortium bidders or disbanding of the consortium;
- 3) limit the changes in sub-contractors whose capacities are needed to the bidder or the consortium in order to fulfill the selection criteria.

The limitations referred to in paragraph 2 of this article shall be stated in the public invitation for tenders or in the tender documents.

Each member of the consortium may directly or indirectly participate in one consortium only at a given time.

Consortium member referred to in paragraph 4 of this article may not participate in the contract award procedure as an independent candidate or bidder. The violation of this rule shall lead to disqualification of all consortia in which such a member participates and disqualification of such a member in his independent participation.

When considering the qualification of consortia, the purchasing entity shall consider the qualifications of each member of the consortium and shall evaluate if the qualifications of the consortium taken together are sufficient and adequate to meet the pre-qualification criteria.

The consortium contract may include provisions limiting the obligations of certain members of the consortium while at least one member of the consortium shall have unlimited

several liability, unless the public body has a different requirement in accordance with paragraph 2 item 1) of this article.

5.4. Sub-Contracting

Article 17

In the tender documents and the draft public contract the public body may request from the bidders to state in their bid in percentage terms the part of the contract value to be sub-contracted.

Sub-contracting is possible only if the proposed sub-contractor meets the requirements for performing professional activity with regard to economic and financial status, as well as technical and/or professional capacity to perform its part of contractual obligations.

In the case referred to in paragraph 1 of this article the bidder shall have unlimited joint and several liability for the performance of contractual obligations.

If sub-contracting is not stated in the bid in the manner stipulated in paragraph 1 of this article, the sub-contract cannot be signed without the prior consent of the public partner.

5.5. The Period for which the Public Contract is Concluded

Article 18

The period for which the public contract is concluded is determined in the manner which does not limit market competition more than necessary in order to ensure appreciation of the investment of the private partner and a reasonable return on invested capital, at the same time taking into consideration the risk related to the commercial use of the subject of the contract.

The period referred to in paragraph 1 of this article shall not be shorter than 5 years or longer than 50 years, with a possibility that after the expiry of the contracted period a new contract may be signed along with the selection of a private partner in manner and according to procedure prescribed by this law.

When the public contract is granting a concession, the period is determined in accordance with this law, unless the period for which the concession is being granted is determined by a special regulation regulating the area to which the subject of concession belongs.

The period referred to in paragraph 2 of this article shall commence as of the date of signing of the public contract.

The period for which the public contract is signed cannot be extended except in cases when the private partner, without his own fault, is prevented in executing the obligations under the contract.

6. Proposal of Interested Persons Relating to the PPP Project Implementation

Article 19

A public body may consider and accept a self-initiated proposal of third parties interested in implementing a PPP project with or without elements of concession, on the basis

of a procedure stipulated in the present article, provided that such proposals do not refer to a project for which the public contract award procedure has been initiated or for which a public invitation to tender has been published.

When submitting a self-initiated proposal, the proposer shall inform the public body of the value of the documents prepared, which the public body or the private partner shall be obliged to compensate in the case of awarding the contract to a person other than the person submitting the self-initiated proposal.

Within 90 days of the receipt of the specific self-initiative proposal, the public body shall determine whether it considers the project to be in public interest and shall notify the proposing party accordingly. A public body may discuss any aspect of the project thus proposed by the proposing entity, including the justification of the costs of preparing the documents referred to in paragraph 2 of this article.

If it is considered that the self-initiated proposal is in public interest and if the public body decides to initiate such a project, this body shall act according to the procedure provided for in Article 26 of this law and provisions of this law regulating the concession granting procedure. If a procedure for public contract award for the proposed PPP with or without elements of concession is initiated, the public body shall state in its invitation that the project was proposed by private proposing entities.

The proposing entity shall be entitled to participate in the contract award procedure if its participation in the preparation of project proposal does not violate competition.

If the person referred to in paragraph 5 of this article has a competitive advantage, the public body shall provide to all other interested persons or bidders all the information necessary to neutralize such advantage.

If the competitive advantage cannot be neutralized, the person referred to in paragraph 5 of this article shall be excluded from the public contract award procedure.

III. PROCEDURE AND MANNER OF PUBLIC CONTRACT AWARD

Types of Procedures

Article 20

The procedure for the selection of the private partner shall be either the public procurement procedure prescribed by the law regulating public procurement or the concession granting procedure regulated by this law.

A public contract is signed as a public procurement contract or a concession granting contract (public contract).

If the implementation of a PPP project implies the granting of a concession, or the provision of services with the right to exploit the specific service and the right to collect payment, the procedure for the selection of the private partner shall be implemented according to the provisions of this law.

If the concession which is granted consists predominantly of characteristics of concession of public works, the selection of the concessionaire / private partner shall be subject to the public procurement procedures as regulated by the law on public procurements.

If the public body for the purposes of implementing a PPP project is engaging advisors, their selection shall be according to the law regulating public procurements.

Selection Criteria and Calculation of Value

Article 21

The selection of the private partner is made according to the selection criteria prescribed by the law governing public procurement, except for provisions regulating the advantage of national bidders over foreign ones.

In implementing the criteria referred to in paragraph 1 of this article the price shall mean the net present value relevant to total costs over the contract period without the value-added tax.

The calculation of the assessed value of the public contract is based on the total value, as assessed by the public body taking into account the assessed total value, including possible options and possible renewal of the public contract.

The assessed value of concession for public services without the right to exploitation of the service and concession for public works shall be calculated according to the relevant provisions of the law regulating public procurement.

The assessed value of concession awarded under this law is determined in accordance with this law and other regulations.

Publication of Public Procurement Notice

Article 22

The procedure of awarding a PPP public contract with or without elements of concession shall be launched by means of a public invitation in the Serbian language and in a foreign language commonly used in international trade.

The identical text of the public invitation shall be published in the Official Gazette of the Republic of Serbia, as well as in a daily paper widely distributed in the whole territory of the Republic of Serbia, on the web page of the public body and on the public procurement portal, stating the date when the invitation is to be published in the Official Gazette of the Republic of Serbia.

The public notice shall, if necessary, be published on one international newspaper and electronically on the internet pages of the Tenders Electronic Daily, the Internet publication attached to the Official Journal of the European Union. This is mandatory for projects whose value exceeds five million euros.

The costs associated with the publishing of the public invitation shall be borne by the public body implementing the procedure.

Deadlines for the Receipt of Bids and Applications

Article 23

When determining the deadlines for the receipt of bids and applications for participation, the purchasing entities shall especially take into consideration the complexity of the public contract and the time needed to compile the bid in order to set the adequate deadlines.

The following deadlines are considered appropriate and may not be shorter than:

1) in an open procedure, the shortest deadline for the receipt of bids is 52 days of the date of publication of the public notice.

2) in case of procedures conducted by a holder of exclusive rights within the meaning of the law regulating public procurement, performing works, as well as in case of restricted procedure, the negotiating procedure with the publication of public notice and the competitive dialogue conducted by the public body, the shortest deadline for the receipt of bids or applications for participation in the restricted procedure is 37 days of the date of sending the public invitation;

(2) in case of a restricted procedure, the shortest deadline for the receipt of bids is 40 days of the date of publication of the public notice.

Confidentiality and Secrecy

Article 24

The public body shall protect the confidentiality of all technical, financial and other data from the submitted bids.

Unless otherwise prescribed by the law or stated in a court decision or in the tender documents, no party in the negotiations may disclose to a third party any technical, price or other elements related to the discussions, communications or negotiations on the basis of the above stated provisions without the prior consent of the other party.

The confidentiality of documentation in the public contracts procedures shall be governed by the provisions of the law regulating public procurement.

Minimum Thresholds

Article 25

This law applies to all public contracts which are not exempt and whose assessed value not including value-added tax (VAT) is equal to or exceeds the minimum thresholds below which public bodies are not obliged to apply the law which regulates public procurement and which are determined in the law regulating the annual budget of the Republic of Serbia.

1. Initiation of Procedure for PPP Project Implementation without Elements of Concession

1.1. Proposing PPP Projects without Elements of Concession

Article 26

The public body shall submit a proposal of the PPP project for the purpose of acquiring an approval and adoption to the following bodies for project approval:

1) to the Government, when the public partner is the Republic of Serbia or another public body of the Republic of Serbia;

2) to the government of the autonomous province, when the public partner is the autonomous province or another public body of this autonomous province; and

3) to the assembly of the local self-government unit when the public partner is the local self-government unit or another public body of such a local self-government unit.

The Contents of the PPP Project Proposal

Article 27

The proposal shall contain:

1) the subject of the proposed PPP, a designation of the geographical area in which the activity of the PPP is performed and the objectives within the scope of public tasks that are to be achieved through the project;

2) the business plan, including the conditions of the PPP, the cost estimates and the analysis of the calculated value in relation to investment made (value-for-money, in accordance with the Methodology adopted by the PPP Commission), specification on the financial viability of the PPP for the public body, specification in terms of the project financing (from the budget, funding by international financial institutions, private financing and the costs of financing) and the availability of funding, the planned distribution of risk;

3) analysis of economic efficiency of the proposed project;

4) types and amounts of instruments of security to be provided by the public and private partner;

5) brief overview of conditions, requirements and manner of providing the infrastructure and services to beneficiaries by the private partner, such as project quality, specification of service outcomes or level of prices, etc;

6) information about the award procedure, especially about the selection and contract award criteria, the chosen contract award procedure, an overview of the contents of the public contract according to Article 46 of this law;

7) requirements in the field of environmental protection, regarding working conditions, security and public health protection and safety of staff engaged by the private partner;

8) the planned time schedule for project development, from the contract award procedure to the beginning of provision of services or to started operation of the facilities or other infrastructure;

9) the project team of the public body which will monitor the project as a whole and perform the function of the tender committee which will select the bidder or the best bid, including external advisors.

The project proponent shall independently or through the public body in charge collect the permits/approvals for the materials by which the specific PPP project is proposed to the authority in charge of approval of PPP projects.

In the process of collecting permits/approvals, the project proposal is submitted to the PPP Commission and Concessions for its opinion and assessment as to whether the specific project can be implemented in the form of a PPP.

If the approving authority referred to in Article 26 of this law fails to approve the project proposal within three months and does not request amendments to it, it shall be considered not approved.

1.3.Procedure Initiation

Article 28

Upon the approval of the project proposal by the approval authority referred to in Article 27 of this law, the public body shall initiate the public procurement procedure for the selection of the private partner in accordance with the law regulating public procurement.

2. Initiating the Procedure for the Implementation of Public-Private Partnership Projects with Concession Elements

2.1. Proposal for the Adoption of the Concession Document

Article 29

Before compiling the proposal for the adoption of the concession document, the public body shall appoint the expert team to prepare the tender documents, to assess the value of the concession, to produce a feasibility study for the granting of concession and to undertake all other actions which precede the granting of concession in accordance with the provisions of this law and special regulations regulating in more detail the area to which the subject of concession belongs (hereinafter: Technical team of the public body);

On the basis of the economic, financial, social and other indicators and the assessment of the environmental impacts of the concession activity, the relevant public body shall prepare the proposal for the adoption of the concession granting document which shall be submitted for adoption to:

1) the Government, if the authority granting the concession is the Republic of Serbia, when the public bodies and the subject of concession are within the competence of the Republic of Serbia;

2) the government of the autonomous province, if the authority granting the concession is the autonomous province, when the public bodies and the subject of concession are within the competence of that autonomous province;

3) the local self-government unit, if the authority granting the concession is the of local self-government unit, when the public bodies and the subject of concession are within the competence of that local self-government unit.

In the procedure of adopting the concession document, the proposal of the concession document shall also be submitted to the PPP Commission for its opinion and assessment whether the specific project may be implemented in the form of PPP with elements of concession.

The proposal referred to in paragraph 2 of this article shall include:

1) the subject of the concession;

2) the reasons for granting the concession;

3) possible revoking of delegated tasks and revoking of the rights to use property in order to perform delegated tasks;

4) data on the environmental impacts of the concession, its impacts on infrastructure and other economic activities, and on the efficient functioning of the technical-technological systems;

5) minimum technical, financial and experience-related qualifications to be fulfilled by participants in the procedure to be qualified to participate in the procedure for the selection of the concessionaire and negotiations;

6) the duration of the concession, including justification of the proposed duration.

7) data on the necessary financial and other resources and the time-frame of their investment; the payment method, the provision of guarantees and other instruments securing the execution of the obligations under the concession; the rights and obligations of the concessionaire to service beneficiaries which are subject to the concession and issues related to lodging of complaints by beneficiaries; the issues related to conditions and manner of exercising supervision; prices and general conditions for the use of goods and performance of activities;

- 8) data on fees paid by the grantor and the concessionaire;
- 9) assessment of the necessary number of staff and qualified human resources for the functioning of the concession, if it is proposed that this should be a part of the concession document.

Upon the adoption of the proposal for the adoption of the concession document by the by the authority referred to in paragraph 2 of this article, the proposed concession document shall become the concession document containing all the elements listed in paragraph 4 of this article.

The Technical Team of the Public Body

Article 30

The tasks of the Technical team of the public body shall be:

- 1) to provide technical assistance to the public body during the preparation of the necessary analyses and/or the feasibility study for the granting of the concession, in the preparation and defining of conditions and the tender documents, the rules and conditions for the evaluation of bidders and received bids and the criteria for bid evaluation/selection;

- 2) to review and evaluation of received bids;

- 3) to draft the proposed decision for the selection of the best bid for the granting of concession and the proposed decision for the annulment of the procedure for the granting of concession, accompanied with justification of such proposals;

- 4) to perform other tasks necessary for the execution of the concession granting procedure.

The concession granting technical team shall maintain minutes of its work and shall compile other documents which are signed by all the members of the technical team.

Feasibility Study for Granting the Concession

Article 31

In the preparation of the feasibility study for granting the concession the public body shall especially take into consideration the public interest, the environmental impact, working conditions, the protection of nature and cultural values, and the financial effects of the concession on the national budget of the Republic of Serbia or the budget of the autonomous province and the budget of the local self-government unit.

Project Appraisal

Article 32

In the process of appraisal referred to in Article 30, paragraph 1, item 1) of this law, the Technical team of the public body shall cooperate with the PPP Commission.

If the technical team determines in the process of appraisal that the specific case is a pure PPP project without elements of concession, the relevant provisions of this law regulating PPP shall apply in the part relevant to proposing and approving PPP projects.

Article 33

After the adoption of the concession document by the authority referred to in Article 29 of this law, the concession granting procedure begins as of the day of publishing the public notice in the Official Gazette of the Republic of Serbia, and ends with the adoption of a final decision on the selection of the best bid or a final decision to annul the concession granting procedure.

Issues referring to the granting of concessions for public services and commercial use of assets in general use or other assets which are not regulated by this law may be regulated in more detail by a separate law, provided that the principles referred to in Articles 5 and 6 of this law are respected.

Tender Documents

Article 34

The tender documents shall consist of the bid form, the contents of the bid, the validity of the bid, the description of the subject of concession (technical specifications), the model of public contract for concession, the conditions and evidence that the bidders are obliged to provide in order to prove their qualification, the request to provide a full list of related enterprises, the deadline for the decision on the selection of the best bid, and all other requirements that the bidder shall fulfill.

If the authority granting the concession or another public body on the basis of a separate law have the right to set the price which the concessionaire shall collect from end beneficiaries or if they have the right to give approval to the concessionaire regarding the tariffs for the public services he provides, such a right, as an integral part of the provisions of the public contract on concession which is subject to the granting procedure, shall be an integral part of the tender documents.

The description of the subject of concession (technical specifications) may not be defined in a manner which limits market competition during the execution of the concession granting procedure.

The tender documents shall be made in a manner which ensures comparability of the bids submitted for the granting of the relevant concession.

The concession granting authority may state in the tender documents bodies from whom the legal or natural person interested in participating in the concession granting procedure may receive information related to taxes, contributions and other public revenues, information on environmental protection, natural and cultural values, energy efficiency, the provisions on occupational safety and working conditions which are in effect in the area in which the activity stated in the public notice for concession will be performed.

In the concession granting procedure, any legal or natural person interested in participating in the concession granting procedure is entitled under equal conditions to have access to the tender documents necessary for the preparation of the bid or the right to purchase such tender documents.

The concession granting authority is obliged to define in advance the amount of fee for the access to or purchasing of the tender documents necessary for the preparation of the bid.

The fee referred to in paragraph 7 of this article shall be revenue to the budget of the Republic of Serbia, or the budget of the autonomous province or the budget of the local self-government unit, if they are the concession granting authority.

The data on legal and/or natural persons who request to have insight in the tender documents or who have purchased the tender documents is protected as a secret according to Article 24 of this law.

All other issues relevant to the contents of the tender documents in cases of granting concessions for public works shall be governed by the relevant provisions of the law regulating public procurement.

Public Notice for the Granting of Concession

Article 35

The concession granting authority shall initiate the procedure for granting the PPP public contract with concession elements by publishing a public invitation notice.

The public invitation notice shall contain the following information:

- 1) the contact details of the concession granting authority;
- 2) the subject of the concession, including the nature and the scope of the performance of the concession activity and the duration of the concession;
- 3) the deadline for the submission of bids, the address for the submission of bids, the language and the script in which the bids shall be submitted;
- 4) the personal, professional, technical and financial requirements to be fulfilled by the bidders and the documents providing evidence of such fulfillment;
- 5) the criteria for the selection of the best bid;
- 6) the date of forwarding the notification of the outcome of the procedure;
- 7) the name and address of the body in charge of dealing with requests for the protection of rights and the data on deadlines for their submission.

The public invitation notice shall contain information regarding the type of procedure based on which the concession shall be granted (with or without pre-qualification).

The public invitation notice may contain other information according to separate laws.

The public invitation notice shall be published according to Article 22 of this law.

Submission of Bids

Article 36

The bids shall be submitted in written form in a sealed envelope designating the address of the concession granting authority, indicating the concession granting procedure to which the bid refers, and indicating “do not open” and the address of the bidder.

The submitted bid shall be binding upon the bidder until the expiration of the period for the submission of bids.

During the period for the submission of bids the bidder may change or make additions to his bid, in the manner specified for the submission of bids.

Period for the Submission of Bids

Article 37

The period for the submission of bids shall not be less than 60 days of the date of publication of the public invitation notice in the “Official Gazette of the Republic of Serbia.

Bid Bond

Article 38

Prior to the commencement of the concession granting procedure, the concession granting authority shall state in the tender documents and in the invitation notice the obligation of the bidder to provide a bank guarantee representing the bid bond (hereafter: the guarantee).

The type and the amount of the guarantee is determined depending on the specific characteristics of each concession, and according to the assessment of the concession granting authority as well as in accordance with special regulations regulating such issues.

The technical team referred to in Article 32 of this law shall propose the type and amount of the relevant guarantees.

The concession granting authority shall determine the amount of the guarantee / bid bond in an absolute amount. The bid bond cannot be more than 5% of the estimated value of the concession.

The bid bond, if unused, shall be returned to the bidder not later than 10 days of the date of making the decision on the selection of the best bid or the decision to annul the concession granting procedure.

The bid bond shall be returned without delay if the bid is not taken into consideration during the selection procedure.

All issues relevant to the bid bonds in the concession granting procedure for works and for services without the right to use services shall be governed by the provisions of the law regulating public procurement.

Criteria for the Selection of the Best Bid

Article 39

The criteria which the concession granting authority shall use for the selection of the best bid are:

1) in case of the economically most favorable bid from the point of view of the concession granting authority it shall be the criteria relevant to the subject of the concession, such as: quality, the level of fees, the technical solution, the aesthetic, functional and environmental characteristics, cost of the service provided to end beneficiaries, operational costs, cost-effectiveness, servicing after taking-over and technical support, dates of delivery of delivery period or the period for the completion of works, or

2) the highest offered concession fee.

When the best bid is selected on the basis of economically best bid, the concession granting authority shall state in the tender documents and in the public invitation notice all the selection criteria for the selection of bids which he intends to use in respect to the relevant significance attached to such criteria.

The significance of the criteria can be expressed by determining a series of maximum values in a given range. If this is not possible for justified reasons, the concession granting authority shall state the criteria in the public invitation notice in the sequence of their importance from the most to the least important criterion.

The concession granting authority shall determine, define and in appraising the justification of granting the concession also implement the criteria prescribed by special

regulations indicating the long-term sustainability of the bidder during the period of implementing the concession for the duration for which the concession is granted.

The Decision Selecting the Best Bid

Article 40

The concession granting authority shall make the decision selecting the best bid for which it will award the public concession contract.

The decision selecting the best bid, accompanied by the minutes on bid opening and bid evaluation, shall be forwarded by the concession granting authority to every bidder without delay by registered return mail or by other means ensuring that the delivery can be proven.

The copy of the minutes on bid opening and bid evaluation may not violate the provisions of the law regulating the protection of confidentiality of data and documentation.

The concession granting authority may not sign the public concession contract before the expiration of the period of stay of proceedings, which is 15 days of the day of submitting the decision on the selection of the best bid to all bidders.

Upon the expiration of the period of stay of proceedings referred to in paragraph 4 of this article the public concession contract can be signed between the concession granting authority and the selected bidder, unless a request for the protection of rights has been submitted.

If a request for the protection of rights has initiated a procedure for legal protection, the public concession contract may be concluded after the adoption of the decision on rejection or dismissal of the request for the protection of rights, in accordance with the law regulating public procurement.

Deadline for the Decision on the Selection of the Best Bid

Article 41

The deadline for the decision on the selection of the best bid shall be appropriate, and it shall commence with the date of the expiration of the deadline for the submission of bids. Unless the tender documents stated otherwise, the deadline for the decision on the selection of the best bid shall be 60 days.

At the request of the concession granting authority the bidder may extend the bid validity period for his bid.

If the concession granting authority does not make the decision on the selection of the best bid and does not forward it to the bidders within the specified deadline, the bidders may submit a request for the protection of rights, in accordance with the law regulating public procurement.

The Contents of the Decision on the Selection of the Best Bid

Article 42

The decision on the selection of the best bid shall contain:

- 1) the name of the concession granting authority along with the number and date of the decision;
- 2) the name of the bidder;
- 3) the subject of the concession;
- 4) the duration, scope and location of the performance of the concession activity;
- 5) the duration of the concession;
- 6) special conditions to be fulfilled by the concessionaire during the duration of the concession;
- 7) the amount of the concession fee or the basis for the determination of the concession fee which shall be payable by the concessionaire or grantor;
- 8) the deadline within which the best bidder shall sign the public concession contract with the concession granting authority;
- 9) the deadline within which the concession granting authority may invite other bidders to sign the concession contract in case of failure of the best bidder to sign the contract, as well as the obligation to extend the bid validity period and the period of validity of the bid bond;
- 10) justification of reasons for the selection of the best bidder;
- 11) instruction on legal remedies;
- 12) signature of the person in charge and the seal of the concession granting authority.

The decision on the selection of the best bid may contain other relevant data in accordance with the tender documents, the submitted bid, or provisions of separate regulations regulating the area to which the subject of concession belongs.

The Concession Fee

Article 43

The concessionaire or the grantor shall pay a concession fee in the amount and in the manner regulated by the concession contract, except when the payment of the concession fee is not economically justified.

The concession fee shall cover also the fee for the utilization of the specific asset in general use as prescribed by the law regulating the utilization of the specific asset.

The monetary concession fee can be contracted as a continued equal amount or as a variable amount, depending on the specific characteristics of the specific type of concession.

The amount of the concession fee shall be determined depending on the type of natural resource, the type of activity, the duration of the concession, the business risk and the anticipated profit, the existing equipment and the area of the asset in general use or the public asset.

The public concession contract may define the changes in the amount of the concession fee over a specific time period, within the duration of the concession period, which shall in such case be stated in the tender documents.

The concession fee when it is paid by the concessionaire shall be the revenue of the budget of the Republic of Serbia, or the budget of the autonomous province or a local self-government unit, and if the concession fee also includes the fee referred to in paragraph 2 of this article, these funds shall be directed and used for the purposes defined in accordance with the law regulating the use of the relevant asset.

The fee that is included in the concession fee referred to in paragraph 2 of this article may not be lower than the amount determined in accordance with the law regulating the use of the relevant asset.

Decision to Annul the Concession Granting Procedure

Article 44

The concession granting authority shall annul the concession granting procedure after the expiration of the deadline for the submission of bids in the following instances:

1) if circumstances become known which, had they been known before the initiation of the concession granting procedure would result in the public invitation not being published or in a substantially different public invitation;

2) if there are no bids submitted until the deadline for the submission of bids;

3) if after the exclusion of bids during the concession granting procedure no bid remains which is acceptable;

4) if based on the criteria for the selection of the best bid it is not possible to make the selection.

The concession granting authority may annul the concession granting procedure if by the expiration of the deadline for the submission of bids only one bid has been received or if after the exclusion of bids during the concession granting procedure only one acceptable bid remains.

In cases of existence of reasons stated in items 1 and 2 of this article, the decision to annul the concession granting procedure shall be made by the concession granting authority.

The decision annulling the concession granting procedure, with a copy of the minutes on the opening and evaluation of the bids, shall be forwarded by the concession granting authority to each bidder without delay by registered return mail or by other means enabling proofs of delivery.

A new concession granting procedure may be initiated after the expiry of the period for the submission of requests for the protection of rights or after the adoption of the decision on the rejection or dismissal of the request for the protection of rights, in accordance with the law regulating public procurement.

IV. PUBLIC CONTRACT

Public Contracts Encompassing Several Subjects of Concession

Article 45

A public contract which is to encompass several subjects of concession shall be governed by the rules applicable to the subject for whose implementation the public contract is predominantly intended.

The choice between the award of a single contract or of several separate contracts shall not be made for the purpose of excluding the application of this law.

The Contents of the Public Contract

Article 46

Public contract shall contain all the provisions, conditions and other clauses which the public partner considers useful for the execution of tasks of the private partner and for the

relations between the private partner and other participants playing a significant role in the implementation of the PPP with or without elements of concession.

In drafting the provisions and the conditions of the public contract, the public partner shall regulate the following issues:

- 1) the nature and the scope of works to be performed and/or services to be delivered by the private partner and the conditions for their provision, provided that they are stated in the tender documents;
- 2) risk distribution between the public and private partner;
- 3) provisions regarding the minimum required quality and standard of services and works in the public interest or in the interest of service beneficiaries or beneficiaries of public facilities, and the consequences in case of failure to fulfill such quality requirements, provided that they do not represent an increase or decrease in the fee payable to the private partner from item 9) of this paragraph;
- 4) the scope of exclusive rights of the private partner, if any;
- 5) any assistance that the public partner may extend to the private partner in acquiring permits and approvals necessary for the implementation of the PPP or of the concession;
- 6) the requirements related to the SPV in terms of: the legal form, the establishment, the minimum capital and minimum other assets or human resources; the structure of shareholders, organizational structure and business premises as well as the business activity of the SPV;
- 7) ownership over the assets relevant to the project and, if necessary, the obligations of other contract parties in terms of acquiring project assets and possibly the necessary rights of easement;
- 8) the amount and the manner of calculation of the concession fee, if any;
- 9) the fee payable to the private partner, irrespective whether it consists of tariffs or fees for the provision of facilities or services, the manner and the formula for the calculation, periodic correction and adjustments of such tariffs or fees, possible payments that the public partner should make to the private partner;
- 10) the mechanism for the increasing or reducing the fee (irrespective of the legal form) to the private partner depending on the good or poor quality of his services/facilities;
- 11) the procedure that the public partner shall use to consider and approve designs, construction plans or specifications, and procedures for testing and final inspection, approval and taking-over of the infrastructure facility and services delivered, if necessary;
- 12) the procedures for the amendment of designs, construction plans or specifications if unilaterally determined by the public partner and procedures for consent on possible extension of deadlines and/or increase of fees (including the costs of financing);
- 13) the scope of obligations of the private partner, depending on the case, to ensure the changes in the facility or services within the period of duration of the contract in order to meet the changed actual demand for services, its continuity and its provision under substantially same conditions to all beneficiaries, as well as the consequences this may have on the fee (and the costs of financing) for the private partner;
- 14) the possible scope of changes in the public contract after it is signed, the persons who have the right to request this and the mechanisms for the harmonization of such changes;
- 15) the possible right of the public partner to approve to the private partner to sign the key sub-contracts or contracts with subsidiaries of the private partner or with other related persons;
- 16) the guarantees to be provided by the private partner or the public partner (including the guarantees by the public partners to financiers);
- 17) insurance coverage to be provided by the private partner;
- 18) the available legal remedies in case that any party to the contract fails to perform its obligations;

19) the measure in which either party to the contract may be exempt from liability for non-execution of obligations under the contract due to circumstances objectively beyond its control (force majeure, changes in legislation, etc);

20) the period of duration of the public contract and the rights and obligations of parties to the contract after its expiration (including the state in which the assets shall be handed over to the public partner); the procedure for the extension of the contracted period of the contract and consequences thereof on the project financing;

21) compensation and clearing of receivables;

22) consequences of detrimental changes in the legislation;

23) the reasons and consequences of premature termination (including the minimum amount that shall be paid to the public or the private partner), liquidated damages, and the relevant provisions stated in item 19) of this paragraph;

24) the possible limitations of liability of the parties to the contract;

25) all auxiliary and related contracts that should be signed including those intended to facilitating financing of project related expenditures, and the effects of such contracts on the public contract. This includes especially special provisions whereby the public partner is allowed to sign contracts for the financing of the private partner and provide the rights for the transfer of the public contract to the person designated by the financiers under certain circumstances;

26) the applicable law and the dispute settlement mechanisms;

27) the circumstances under which the public partner or a designated third party may (temporarily or otherwise) take over the management of the facility or other functions of the private partner in order to ensure effective and continuous provision of services and/or of the facility which are the subject of the contract in case of serious failures of the private partner in the execution of his obligations; and

28) taxation and fiscal issues – if any.

If the public contract, irrespective of the public body which is signing it, contains provisions which may in any manner result in the liability of the Republic of Serbia or have direct consequences on the budget of the Republic of Serbia, consent of the Government shall be ensured.

In case of failure to provide the consent referred to in paragraph 3 of this article, such provisions shall be null and void by the force of the law.

Any issues relating to the public contract which are not regulated specifically by this law shall be governed by the regulations of the Republic of Serbia.

Approval of the Public Contract

Article 47

Before making the decision on the selection of the private partner and the signing of the public contract, the public body shall submit to the authority referred to in Articles 27 and 30 of this law the final draft of the public contract including all appendices which are integral parts of thereto, for approval.

The authority referred to in paragraph 1 of this article, on the basis of the assessment of compliance of the draft contract with this law and compliance with the tender documents, give its approval of the final draft contract within 30 days of submitting.

The public contract may be signed after the approval referred to in paragraph 2 of this article has been given.

Any amendments and additions to the signed public contracts amending the rights and obligations of the parties to the contract, shall be subject to the procedure according to this

article. The giving of approval of the government to the final draft of the contract in which the Republic of Serbia is not a party to the contract, does not imply liability of the Republic of Serbia for disputes that may result from the contract between the public and the private partner.

Unless otherwise agreed in writing, the public body which is the public partner in the public contract is always responsible for the implementation of the PPP project and its possible consequences.

Signing of the Public Contract

Article 48

The public partner shall invite the selected best bidder to sign the concession contract within the time period determined in the decision on the selection of the best bid, after the acquired approval referred to in Article 47 of this law.

The public contract in writing is signed by the authorized representatives of the public partner and the selected best bidder, and in cases when the contract provides for the disposal of real property or disposal of shares in a joint undertaking, the contract shall be certified.

By signing the public contract the private partner acquires the right and undertakes the obligation to perform the activity for which the public contract is awarded.

The public contract shall be made in accordance with the tender documents, all the information from the public invitation notice, the selected bid and the decision on the selection of the best bid.

Before signing the public contract, the public partner shall take over from the selected bidder the necessary guarantees or instruments securing the collection of the concession fee or other fees, as well as compensation for possible damages caused by failure to execute the obligations from the public contract (pledges, bank guarantees, personal pledges, drafts, etc) in line with the estimated expected value which results from the right granted by the contract.

The guarantees and instruments securing payment referred to in paragraph 5 of this article shall be deposited in an adequate place by the public partner who shall guard them throughout the period for which the public contract is signed according to this law.

Financing of Public Contracts

Article 49

A public contract can be financed by the private partner through a combination of direct investments in the capital or through a loan, including without limitation structured or project financing and other similar instruments provided by international financial institutions, banks, or other third parties (hereafter: financiers).

With the prior consent of the public partner, the private partner shall be authorized to assign, put under mortgage, or pledge, for a time period and scope that is in accordance with this law, or the law regulating public property, any of his rights, or obligations from the public contract or other project related property in favor of the financiers and for the purpose of securing payment of any existing or future claims related to construction and financing, or re-financing of the PPP.

At the request of the financiers and the private partner, the public partner may accept to give certain reasonably requested security and accept to undertake certain liabilities necessary to the private partner with respect to any obligation from the public contract.

The security referred to in paragraph 3 of this article may imply also the signing of a separate direct contract between the public partner, the private partner, and the financier, according to which, inter alia, the public partner may agree with the following:

1) that the financiers are authorized, instead of the private partner, to exercise temporarily all rights from the public contract and to remedy any failure of the private partner, and that the public partner shall accept all such actions as if undertaken by the private partner;

2) that the private partner, without the prior consent of the financiers, shall not accept cancelation or termination of the public contract at the request of the public partner;

3) that the public partner shall not on the basis of the public contract file requests with respect to the failures of the private partner without a prior notification to the financiers regarding such failures, allowing the financiers and the private partner an opportunity to rectify such failures;

4) that the public partner shall in advance give its consent to temporary or permanent assignment of the contract position or any rights of the private partner under the public contract and that he shall grant the requested permits to strengthen the security given to financiers by the private partner;

5) any other usual provisions which are justified in order to adequately secure the interests of the public partner and the financiers.

Before concluding the direct contract referred to paragraph 4 of this Article, the public body shall be obliged to obtain consent of the authority referred to in Articles 26 and 29 of this law in accordance with Article 47 of this law.

The consent referred to in paragraph 5 of this article shall imply the right of the financiers to take actions and protect their rights in the manner provided for by the direct contract without any separate subsequent approval.

The Procedure and the Limits of Amendments to the Public Contract

Article 50

At the request of the public partner, or of the private partner or the bank, or of other financial institutions, the contract may be amended.

Amendments referred to in paragraph 1 of this article cannot refer to the following provisions:

1) the subject of the contract;

2) the time period for which the contract is signed;

3) in case of public contracts for concessions, the offered concession fee.

The procedure of amendment of the contracts is governed by the provisions of the law on contracts.

Awarding Additional Works to the Concessionaire

Article 51

In the case of concession for works, the concession granting authority may, without conducting any new concession award procedure, award to the concessionaire carrying out these works additional works which were not included in the initially considered concession project or in the basic public concession contract but which, due to unforeseen circumstances, became necessary for carrying out the works, and shall do so in accordance with the relevant provisions of the law regulating public procurement.

Stabilization Clause

Article 52

In case of change of regulations after the signing of the public contract which have negative consequences on the position of the private or public partner, the contract may be changed without any limitations, in a scope necessary to reinstate the position of the private or public partner which existed at the moment of signing of the public contract.

V. TERMINATION OF PPP AND CONSEQUENCES OF SUCH TERMINATION

The Methods of Termination

Article 53

PPP with or without elements of concession shall be terminated:

- 1) with the fulfillment of the legal conditions for it,
- 2) with the termination of the contract for reasons of public interest,
- 3) with the agreed termination of the public contract,
- 4) with the unilateral termination of the public contract,
- 5) with the effectiveness of a court decision whereby the public contract is pronounced null and void and is cancelled.

PPP with or without elements of concession shall be terminated with the fulfillment of legal conditions for it:

- 1) with the expiration of the period of time for which the public contract was signed,
- 2) with the death of the private partner, or with the liquidation or bankruptcy of the private partner.

Notwithstanding paragraph 2 item 2) of this Article, PPP with or without elements of concession need not be terminated with the liquidation or bankruptcy of a consortium member if at least one consortium member, with prior consent of the public partner, assumes the unlimited joint and several liability to fulfill the part of the public contract of the consortium member that was liquidated or over which the bankruptcy procedure was completed.

Premature Termination of the Public Contract due to Default of the Private Partner

Article 54

The public partner may unilaterally terminate the public contract in the following cases:

- 1) if the private partner in case of concession failed to make payment of the concession fee more than two consecutive times or continually fails to make regular payments of the concession fee;
- 2) if the private partner is not performing the public works or is not providing the public services according to quality standards for such works or services in a manner agreed in the public contract;

3) if the private partner does not implement measures and actions necessary to protect the assets in general use or the public asset in order to ensure protection of nature and cultural values;

4) if the private partner provided false and inaccurate data which were decisive in the evaluation of his qualification during the selection of the best bid,

5) if the private partner through his fault does not begin to perform the public contract in the agreed time;

6) if the private partner performs also other acts or fails to perform the necessary acts which is contrary to the public contract;

7) if the private partner assigns to a third party his rights from the public contract without prior approval of the public partner;

8) in other cases in accordance with the provisions of the public contract and general rules of law on contractual obligations and the generally accepted rules for the specific type of contract.

The criteria based on which the public partner determines the existence of reasons for termination of contract pursuant to paragraph 1, items 2) to 7) of this article, shall be determined in the public contract.

Prior to unilateral termination of the public contract, the public partner shall first in writing notify the private partner of his intention and shall assign an appropriate period of time for the private partner to remedy the reasons for termination of the public contract and make his statements regarding the reasons.

If the private partner does not remedy the reasons for termination within the deadline stated in paragraph 3 of this article, the public partner shall terminate the public contract.

In case of unilateral termination of the public contract by the public partner, the public partner shall have the right to compensation for damages caused by the private partner according to the general rules of regulations on contractual obligations.

The consequences of premature termination of the public contract due to default of the private partner shall be regulated by specific rules defined by the public contract, as well as the general rules of law on contracts and torts.

Premature Termination of the Public Contract due to Default of the Public Partner

Article 55

The private partner may unilaterally terminate the public contract according to this law, the public contract and the general legislation on contracts and torts, if the public partner acts in a manner which makes their contractual relations untenable or fully disrupts the capacity of the private partner to perform the public contract.

Reasons for such termination shall be defined in the public contract.

The default of the public partner may include:

1) expropriation, pledge or seizure of property or of the share of the private partner by the public partner;

2) failure of the public partner in terms of payment of accrued payments in favor of the private partner;

3) violation of obligations from the public contract by the public partner which significantly disrupt or make impossible for the private partner to perform the obligations from the contract.

The consequences of premature termination of the public contract due to default of the public partner shall be regulated by specific rules defined by the public contract, as well as the general rules of law on contracts and torts.

The Termination of the SPV

Article 56

SPV shall be terminated with the expiration of the time period for which it had been established, unless otherwise provided for in the public contract, and in all other cases prescribed by the law or by the public contract.

In case of termination of the SPV, the facilities, equipment, plants and other assets from the scope of the PPP shall be handed over to the public partner.

The concession relations can also be terminated by the acquisition of the concession under the conditions provided in the public concession contract and exceptionally, if this is necessary due to public interest, the acquisition of the concession may be performed under the conditions and in a manner prescribed in regulations on expropriation in which case the concessionaire shall be entitled to the payment of the full compensation according to its market value.

The concession relations may be terminated by the withdrawal of the concession document which is made by the grantor, in case when the concessionaire does not perform the concession activity for more than one year, does not perform the obligations undertaken by the contract, for reasons of public security, and in the case that the performance of the concession activity causes negative environmental or public health consequences, while the measures prescribed in special regulations are not sufficient to prevent such consequences, and under conditions prescribed in the public contract.

Handing-Over of the Facility

Article 57

After the termination of the concession relations, the facilities, equipment, plants and other assets from the scope of the concession shall become the property of the Republic of Serbia, the autonomous province, or the local self-government unit, unless provided otherwise by the direct agreement referred to in Article 49 of this law.

The concessionaire shall hand over the facility, equipment and plant referred to in paragraph 1 of this article, as well as other assets that are the subject of the concession, and which are the property of the Republic of Serbia, the autonomous province, or the local self-government unit, free of any encumbrance and in a state which ensures their unhindered use and functioning.

VI. PROTECTION OF RIGHTS

Article 58

Legal protection in the public contract award procedure is ensured in accordance with the law regulating public procurement.

Any person interested in participating or participating in the public contract award procedure on the basis of this law may lodge a request to the Republic Commission for the protection of rights against the decisions of the public body implementing the procedure which may be refuted separately, and which are illegal in the opinion of such person.

Article 59

Issues related to compensation for damages due to illegal decisions of the public body in the procedure of public contract award subject to this law shall be adjudicated by competent courts of the Republic of Serbia on the basis of general laws in effect.

The private partner is guaranteed the rights prescribed by the law, public contract, the contract on project financing and foreign persons are also guaranteed the rights prescribed in international agreements on incentives and protection for outstanding investments.

If the state authority in charge by implementing regulations on expropriation adopts a document to seize or limit the right to use the built facilities that are the subject of the PPP with or without elements of concession, the private partner shall have the right to compensation which shall not be less than the market value, and which is paid without delay.

VII. RESOLUTION OF DISPUTES

Arbitration

Article 60

The parties to the contract may agree to resolve any disputes between the parties resulting from the public contract by arbitration before national or international arbitration.

Arbitration with the seat abroad cannot be agreed, when as private partner occur domestic legal entity or physical person, or the consortia consisted exclusively of domestic legal or physical persons.

If the parties to the contract have not agreed to resolve disputes by arbitration, the court of exclusive jurisdiction shall be courts of the Republic of Serbia.

In the procedure referred to in paragraph 1 to 3 of this article the applicable law shall be the law of the Republic of Serbia.

VIII. SUPERVISION

Supervision over Implementation of Public Contracts

Article 61

The Government shall by special documents regulate supervision over implementation of public contracts for the purposes of this law.

The document referred to in paragraph 1 of this article shall prescribe the rights and obligations of the public and private sectors in the procedure of exercising supervision over implementation of the contract.

Supervision in the procedure of granting concession for public works shall be conducted with appropriate application of the law regulating public procurement.

Article 62

Apart from the supervision referred to in Article 61 of this law, the line ministry in charge of finance, or the authority of the autonomous province or of the local self-government unit in charge of finance, may independently, without the request of the public partner, initiate the supervision procedure through inspection and relevant tax administrations and authorities over the private partner who is not performing his obligations in accordance with the public contract, within the scope of competences of the ministry in charge of finance or the authority of the autonomous province or of the local self-government unit in charge of finance.

The public partner, or the body in charge of performing supervision over implementation of the law regulating different types of PPP with or without elements of concession, shall respect and execute the requests of the ministry in charge of finance the authority of the autonomous province or of the local self-government unit in charge of finance, and shall participate in the execution of all types of supervision referred to in paragraph 1 of this article.

In case of non compliance with the measures and recommendations made by the ministry in charge of finance the authority of the autonomous province or of the local self-government unit in charge of finance, and in case of lack of cooperation, the ministry in charge of finance the authority of the autonomous province or of the local self-government unit in charge of finance, may request the initiation of an administrative and inspection supervision in accordance with the law regulating the functioning of public administration bodies.

Except for measures referred to in paragraphs 1 to 3 of this article, the ministry in charge of finance the authority of the autonomous province or of the local self-government unit in charge of finance, may implement also any other activity in cooperation with public partners implementing public contracts in order to act preventively and in order to harmonize all activities in the area of PPP with or without elements of concession, throughout the duration of the public contract.

Article 63

According to this law, the public partner shall monitor continually the work of the private partner and the execution of his obligations under the public contract, and to monitor regularly the performance of all payments in accordance with the public contract.

The public partner shall:

- 1) at least once a year request from the private partner special periodical reports on his operations, activities and execution of his obligations, according to the public contract;
- 2) inform the ministry in charge of finance the authority of the autonomous province or of the local self-government unit in charge of finance, on the received periodical reports in line with paragraph 2 of this article;
- 3) throughout the duration of the public contract to maintain separate records relevant to the operations of the private partner, including the keeping of records on all subsidiary entities of the private partner to whom the contract is awarded;
- 4) maintain documentation relevant to the specific PPP with or without elements of concession until the expiration of the duration for which the contract was signed. After the expiration of the period for which the contract was signed, the documentation shall be maintained in accordance with regulations relevant to maintaining of archive documentation;
- 5) within not more than 30 days after receipt of the request of the ministry in charge of finance the authority of the autonomous province or of the local self-government unit in charge of finance, to provide all necessary data regarding the ongoing PPP with or without elements of concession;

6) notify the relevant public attorney's office of the procedures regarding the violation of the contract when there are grounds for the initiation of certain procedures by the competent public attorney's office.

The public partner shall be obliged, in case of unsettled debts arising from the contract to undertake all measures of supervision and forced debt collection, and all legal actions in accordance with the provisions of the public contract, other authorizations, and the provisions of this law.

Article 64

The public partner shall, promptly and in writing, inform the ministry in charge of finance the authority of the autonomous province or of the local self-government unit in charge of finance of any noticed irregularities and measures undertaken, not later than 30 days of the date of noticing the irregularity or of undertaking the measure.

The private partner shall act according to the request of the public partner or of the ministry in charge of finance or the body of the autonomous province or the local self-government in charge of finance if requested to confirm the execution of obligations undertaken by the contract or other significant data regarding the honoring of the contract within 30 days of receipt of such request.

In case of failure to act pursuant to the request referred to in paragraph 2 of this article, the public partner shall undertake all legal action in accordance with his competences and provisions of the public contract.

In procedures when it is not possible to fulfill the obligations from the public contract, the public partner shall so notify the relevant public attorney office and supervisory and inspection services and to undertake all necessary action and measures in order to remedy the noticed irregularities.

The public partner shall notify the ministry in charge of finance the authority of the autonomous province or of the local self-government unit in charge of finance of measures undertaken in line with paragraph 4 of this article within 15 days from the date of undertaking such measures and report regularly on all the procedures initiated during the implementation of measures undertaken.

IX. THE COMMISSION

The PPP Commission

Article 65

Technical assistance in the implementation of public-private partnership and concession projects in accordance with this law shall be provided by the Public-Private Partnership Commission (hereafter: Commission) established by the Government at the proposal of Prime-Minister, the ministry in charge of economy and regional development, the ministry in charge of finance; the ministry in charge of infrastructure, the ministry in charge of mining, the ministry in charge of utility activities, the ministry in charge of environmental protection, the autonomous province and the City of Belgrade.

The representative of the ministry in charge of economy and regional development (hereafter: the ministry), shall at the same time be the chairman of the Commission, and the

representative of the ministry in charge of finance shall be the deputy chairman of the Commission.

The Commission shall consist of nine members.

A person nominated to be a member of the Commission shall be a citizen of the Republic of Serbia, with qualification of at least a university diploma, and shall have expertise in the field of public-private partnership, public procurement, and concessions, and/or the EU law.

Members of the Commission receive remuneration for the work in the Commission, as determined by the Government.

The Commission shall adopt its Rules of Procedure.

The Commission is operationally independent in its work.

Resources and Conditions for Work of the Commission

Article 66

The resources for the work of the Commission shall be provided in the budget of the Republic of Serbia.

The Ministry shall provide the premises and other conditions for work of the Commission.

Appointment and Termination of Office of Members of the Commission

Article 67

A member of the Commission shall be appointed for a five year term in office, with a possibility of reappointment, at the proposal of the same proponent.

The term in office of a member of the Commission shall end:

- 1) with the expiration of the time for which the member was appointed;
- 2) if the member acts contrary to the provisions of this law;
- 3) if the member in his work does not comply with the provisions of the Rules of Procedure;
- 4) if the member is sentenced to an unconditional prison sentence of at least six months;
- 5) at the member's personal request, by filing a resignation in writing.

The Competences of the Commission

Article 68

The Commission:

- 1) assists in the preparation of proposals for PPP in order to facilitate the development of public-private partnerships and public contracts;
- 2) provides information and consultation on issues of public-private partnerships with or without concession elements;
- 3) gives its opinion in the procedure of approval of proposed PPP projects without elements of concession and in the procedure of proposing the concession document to the relevant authorities for approval.

4) identifies and facilitates the implementation of the international best practice for the Republic of Serbia in the field of public-private partnerships with or without concession elements;

5) develops methodological materials in the field of public-private partnerships;

6) cooperates with other public administration institutions and with non-government organizations in the field of public-private partnerships;

7) at the request of the public body, or of the concession granting authority, provides recommendations on projects.

8) submits to the Government its annual report on projects implemented in accordance with this law in the Republic of Serbia;

9) cooperates with the authorities of the Republic of Serbia in charge of budget inspection, the State Audit Institution, the services of the autonomous province and of the units of local self-government in charge of budget inspection and with other national and international authorities, organizations and institutions in the performance of tasks from within its competences;

10) publishes at its web-pages the annual report from item 8) of this article after it is endorsed by the Government, as well as other data and information which it deems are relevant for the implementation of this law;

11) performs also other tasks in accordance with this law.

Expert, Administrative, and Technical Tasks of the Commission

Article 69

Expert, administrative and technical tasks for the Commission shall be performed by the Ministry, which especially:

1) receives and processes project proposals;

2) maintains records on PPP and concession projects;

3) prepares draft annual report, which the Commission submits to the Government;

4) performs also other expert, administrative and technical tasks of importance for the work of the Commission.

X. RIGHTS AND OBLIGATIONS IN THE PUBLIC CONTRACT IMPLEMENTATION PROCEDURE

Ownership of Real Property

Article 70

If the Republic of Serbia is the owner of real property intended to be used for the performance of the concession activity, and when the body granting the concession is the autonomous province or a local self-government unit, the consent on the proposal to adopt the concession document shall be given by the Government at the proposal of the ministry in charge of finance.

When the owner of the real property intended to be used for the performance of the concession activities is a private or another person, the expropriation of such real property shall be carried out in accordance with the law regulating expropriation.

Pledge

Article 71

The private partner may institute a lien or another instrument of security on the assets which are subject to the public contract, or on the share in the joint undertaking in favor of a bank or another financial institution if so provided for in the public contract and with the prior approval of the public partner, except on the assets on which, pursuant to the law regulating public property, a mortgage or a real security instrument may not be set up.

The rights referred to in paragraph 1 of this article cannot be transferred or assigned to third parties without the explicit consent of the public partner.

The person from paragraph 1 of this article shall, within a period not longer than 30 days of the day of institution of the lien, so notify the ministry in charge of finance or the authority of the autonomous province or of the local self-government unit in charge of finance, of all liens instituted on the basis of requests referred to in paragraph 1 of this article.

Foreign Currency Treatment of PPP With or Without Elements of Concession

Article 72

The payment of the concession fee or the fee payable by the private partner on the basis of a public contract shall be made in dinars.

Notwithstanding paragraph 1 of this article, at the proposal of the public body, the Government may give its consent that payments related to the activities from the public contract may be made in foreign currencies and that the assets in the accounts of the private partner may at any time be deposited in a foreign currency.

Treatment of Found Objects

Article 73

The private partner shall, without any compensation, hand over to the public partner, any objects found in the ground which represent the historical, cultural or natural value.

If the continuation of the works could represent a threat to the wholesomeness or the value of the objects found, the private partner shall stop the works and duly notify the public authority in charge of protection of historical, cultural or natural values.

The public contract shall regulate the mutual rights and obligations of the private and public partner in case of circumstances referred to in paragraph 2 of this article.

Public Contracts Register

Article 74

Public contracts shall be recorded in the Public Contracts Register (hereafter: the Register) which shall be maintained by the ministry in charge of finance as a unique electronic data base on the public procurement portal – as sub-portal.

The public body shall submit to the ministry referred to in paragraph 1 of this article the concluded public contract with all appendices as well as all amendments to the contract and all appendices for the purpose of inscription into the Register. The minister in charge of finance shall prescribe the contents and manner of maintaining the Register, the time periods within which public contracts and appendices referred to in paragraph 2 of this article, the manner of inscription and the persons authorized to have access to the Register, as well as the data that may be accessed, in accordance with special regulations regulating data protection and confidentiality.

The Register shall be public.

XI. TRANSITIONAL AND FINAL PROVISIONS

Article 75

Procedures initiated until the day of entry into force of this law shall be completed in accordance with the regulations which were in force when they were initiated.

Article 76

The regulations referred to in Articles 61 and 74 of this law shall be adopted within 90 days from the date of entry of this law into force.

Article 77

On the day of entry into force of this law the Concessions Law (Official Gazette of RS, no. 55/03) shall cease to be valid.

Article 78

This law shall come into force eight days after its publication in the Official Gazette of the Republic of Serbia.

E X P L A N A T I O N

I. CONSTITUTIONAL BASIS

The constitutional basis for adopting the Law on Public-Private Partnership and Concessions is contained in Article 97 item 6 of the Constitution of the Republic of Serbia (Official Gazette of RS, no. 89/06), which determines that the Republic of Serbia regulates, inter alia, the system of carrying out specific commercial and other activities.

II. REASONS FOR ITS ADOPTION

The reasons for proposing the adoption of the Law on Public-Private Partnership and Concessions are reflected in an increasing need for building new public infrastructure, investing in assets in general use, as well as providing services of public interest in the Republic of Serbia, which led to an increase in demand for private sources of financing the above mentioned projects. In addition, due to the lack of public financing and insufficient funds of the state authorities to develop and modernize the road and utility infrastructure, it is necessary to improve legal and economic mechanisms without delay in order to attract private investments.

The Law on Concessions adopted in 2003 (Official Gazette of RS, no. 55/03) (hereinafter: Law) made the first step towards establishing basic principles for granting concessions in almost all sectors.

The objectives to be achieved by this law are:

- 1) encouraging the application of public-private partnership (hereinafter: PPP) with the aim of building public infrastructure and providing services in public interest;
- 2) providing quality services of public importance;
- 3) greater value for the invested (spent) money by optimizing efficiency, effectiveness and economy regarding total costs related to ownership of public infrastructure and regarding the provision of services of public importance;
- 4) creating an efficient mechanism that would allow all government levels to implement projects through public-private partnership with or without elements of concession based on clear rules;
- 5) attracting domestic and foreign investors and banks to finance/co-finance and manage projects of public interest (participation of the private sector);
- 6) providing a legal framework for a transparent and fair tender procedure with equal treatment of all bidders in the process of looking for a private partner for such projects;
- 7) harmonization with the EU regulations, especially in the area of public procurement;
- 8) compliance with international standards and the best international practice to the extent that is not contrary to the law of the European Union.

III. EXPLANATION OF THE BASIC LEGAL CONCEPTS AND INDIVIDUAL SOLUTIONS

The public-private partnership, for the purposes of this law, is a long-term cooperation between a public and a private partner for the purposes of providing financing, construction,

reconstruction, management or maintenance of infrastructure and other facilities of public interest and provision of services, which has the following elements:

1) the private partner takes over from the public partner: the obligation of the design, construction or reconstruction of public infrastructure or a facility of public interest, as well as the maintenance of public infrastructure or provision of services of public interest including one or more of the following obligations: financing, management and maintenance, for the purpose of providing services of public interest to final beneficiaries from within the competences of the public partner, or for the purpose of ensuring the necessary preconditions for the public partner for the provision of services of public interest within his competences, or provision of services of public interest from within the competences of the public partner to the final beneficiaries;

2) the manner of financing the project – partly or fully by the private sector;

3) that the public partner may, in view of obligations undertaken by the private partner, transfer to the private partner certain real rights, or grant a concession to the private partner, or pay to the private partner a fee in monetary terms;

4) each partner undertakes responsibility for the risk which it can better manage or which it can affect, or risks are divided in a balanced manner, all for the purpose of ensuring optimal risk management for the duration of the PPP project, with the use of management, technical, financial and innovative capacities of the private partner, and by improved exchange of skills and knowledge between the public and the private partners;

5) PPP may be organized as an institutional PPP or as a contractual PPP.

Along with the execution of the specified obligations, the private partner may also be allowed to perform commercial activities within the execution of the public-private partnership project, only if it is not possible in another manner to ensure the necessary level of cost-effectiveness in the implementation of the PPP project and the return on investment.

A concession, for the purposes of this law, is a PPP in which a public contract regulates the commercial use of natural resources or assets in general use which are publicly owned or the performance of an activity of public interest which the competent authority transfers to a national or foreign person, for a specific period of time, under specially prescribed conditions, against the payment of a concession fee.

Concession for works, for the purposes of this law, is a legal relation regulated by a contract whose subject is the execution of works or design and execution of works, which refer to one or more activities identified by the law regulating a specific concession, or activities listed in Appendix II of the law regulating public procurement, if the fee for public works consists either of the right to commercial use of the works itself or that right along with the payment.

Concession for services, for the purposes of this law, is a legal relation regulated by a contract whose subject is the provision of one or more services in general interest or specified by the law regulating a specific concession, or services listed in Appendix I of the law regulating public procurement, if the fee for the provided services consists either of the actual right to commercial use or the provision of services or of that right along with the payment.

Article 1 defines the subject of the law, which contains the conditions and manner for preparing, proposing and approving projects for public-private partnership, the entities in charge of and authorized for proposing and implementing public-private partnership projects, the rights and obligations of public and private partners, form and content of public-private partnership contracts with or without concession elements (hereinafter: public contract) and

legal protection in public contract award procedures, conditions and manner of concession approval, the subject of concession, the entities in charge of and authorized for concession approval procedure, the termination of concession, protection of rights of parties participating in public contract award procedures, the establishment, status and the competence of the Public-Private Partnership Commission, as well as other issues of significance for public-private partnership with or without elements of concession or for concession.

Articles 2 and 3 define that the provisions of this law apply to all investments of publicly-owned funds in a joint undertaking with a private partner, as well as the cases in which this law does not apply.

Article 4 regulates the definitions and terms used in the law.

Articles 5 and 6 set the principles used in the application of this law, as follows: the principle of protection of public interest, of efficiency, of transparency, of equal and just treatment, of free market competition, of proportionality, of environmental protection and of autonomy of will of parties to the contract and, in addition to the previously mentioned principles, those observed in the concession granting procedure: the principle of free movement of goods, the principle of free provision of services, the principle of efficiency, the anti-discrimination principle and the principle of mutual recognition.

Article 7 defines the concept of PPP, which implies long-term cooperation between a public and a private partner for the purposes of providing financing, construction, reconstruction, management or maintenance of infrastructure and other facilities of public interest and provision of services.

Article 8 defines contractual public-private partnership.

Article 9 defines institutional public-private partnership, establishment of a joint undertaking between the public partner and the private partner, application of regulations to the contracts on establishment, as well as to the disposal of shares or stocks of the special-purpose vehicle.

Articles 10 and 11 define the concept of concession as the commercial use of natural resources or assets in general use which are publicly owned or the performance of an activity of public interest which the competent public body transfers to a national or foreign person, for a specific period of time, under specially prescribed conditions, against the payment of a concession fee. They also define concessions for works and concessions for services, to which the procedure prescribed by the law regulating public procurement applies, and the subject of a concession, as well as that a concession may be granted for the purpose of commercial use of natural assets, or goods in general use which are publicly owned, or for the purpose of performing an activity of general interest, especially in the areas specified in this Article.

Article 12 defines the public partner i.e. public bodies and their competences for the implementation of PPP projects within their competence.

Article 13 defines who may be a concession granting authority.

Article 14 defines the private partner.

Article 15 defines the special-purpose vehicle, the person that establishes it and the manner of its establishment.

Article 16 defines consortium participation in the contract award procedure, as well as the limitations that the public body may set, if there are objective reasons for this, regarding the number of consortium members, its structure, changes in sub-contractors and similar, as well as their responsibility.

Article 17 defines sub-contracting and the possibility of requesting from the private partner to state, in the moment of submitting its bid, the bidders and third parties it plans to engage in order to implement the project.

Article 18 defines the period for which the public contract is concluded, as well as the basis for determining and proposing such period.

Article 19 defines interested party and the handling of self-initiative proposals by the public body.

Article 20 defines the procedure of selection of the private partner and that the procedure for the selection of the private partner shall be either the public procurement procedure prescribed by the law regulating public procurement or the concession granting procedure regulated by this law. It further defines that a contract on public-private partnership is signed as a public procurement contract or a concession contract (public contract). If the implementation of a PPP project implies the granting of a concession, or the provision of services with the right to exploit the specific service and the right to collect payment, the procedure for the selection of the private partner shall be implemented according to the provisions of this law. If the concession which is granted consists predominantly of characteristics of concession for public works, or concession for public services without the right to exploitation of the specific service or sectoral activity, the selection of the concessionaire / private partner shall be subject to the public procurement procedures as regulated by the law on public procurement, within the available types of procedures. This article also defines that if the public body for the purposes of implementing a PPP project engages advisors, their selection shall be according to the law regulating public procurement.

Article 21 defines setting the criteria and calculating the value of the subject of PPP, as well as that in this calculation the assessed total amount is taken into account, including possible options and possible renewal of the public contract. It is not allowed to divide any project in order to prevent the application of the provisions of this law.

Article 22 defines the rules for the publication of public notice, the language in which the public notice is published, as well as the place of publishing the public notice.

Article 23 defines the deadlines in the procedure that are considered appropriate.

Article 24 defines the confidentiality and secrecy of data, as well as that the confidentiality of documentation in the public contract award procedures shall be governed by the provisions of the law regulating public procurement.

Article 25 defines that this law applies to all public contracts which are not exempt and whose assessed value not including the value-added tax (VAT) is equal to or exceeds the minimum thresholds determined in the law regulating the annual budget of the Republic of Serbia.

Article 26 defines the manner of proposing projects without elements of concession, as well as the approving bodies to which the projects are proposed.

Article 27 defines the contents of the PPP project proposal, as well as the bodies to which the project proposals are submitted for approval and provision of opinion.

Article 28 defines the initiation of the public procurement procedure.

Article 29 defines the proposal for the adoption of concession document, the bodies to which the proposal is submitted, as well as its contents.

Article 30 defines the technical team that is formed by the public body for conducting the concession granting procedure and its tasks.

Article 31 defines what should be taken into consideration in the preparation of the feasibility study for granting a specific subject of concession.

Article 32 defines the appraisal of the proposed project.

Article 33 defines in what way the concession granting procedure begins and the application of this law to specific sectors.

Article 34 defines the contents of the tender documents as well as the rights of participants in the procedure that are related to the tender documents, access to them, their purchase, availability of amendments and similar.

Article 35 defines the contents of the public notice for the granting of concession.

Article 36 defines the manner of submitting the bids.

Article 37 defines the period for the submission of bids.

Article 38 defines the bid bond, its amount, return, extension at the request of the public body and other matters in connection with this type of guarantee.

Article 39 defines that the criterion for the selection of the best bid may be the economically most favorable bid or the highest offered concession bid and also defines the manner of appraising and evaluating the specified criteria.

Article 40 defines decision making on the selection of the best bid, the period of stay and similar.

Article 41 defines the period for making the decision on the selection of the best bid.

Article 42 defines the contents of the decision on the selection of the best bid.

Article 43 defines the concession fee, while the concessionaire is obligated to pay a concession fee in the amount and in the manner regulated by the concession contract, except when the payment of the concession fee is not economically justified. The concession fee shall cover also the fee for the utilization of the specific asset in general use as prescribed by the law regulating the utilization of the specific asset. The monetary concession fee can be contracted as a continued equal amount or as a variable amount, depending on the specific characteristics of the specific type of concession. The amount of the concession fee shall be determined depending on the type of activity, the duration of the concession, the business risk and the anticipated profit, the existing equipment and the area of the asset in general use or the public asset. The public concession contract may define the changes in the amount of the concession fee over a specific time period, within the duration of the public concession contract, which shall in such case be stated in the tender documents. The concession fee is the revenue of the budget of the Republic of Serbia, or the budget of the autonomous province or a local self-government unit.

Article 44 defines the reasons for annulling the concession granting procedure, namely: 1) if circumstances become known which, had they been known before the initiation of the concession granting procedure would result in the public invitation not being published or in a substantially different public invitation, or 2) if there are no bids submitted until the expiry of the period for the submission of bids, or 3) if after the exclusion of bids during the concession granting procedure no bid remains which is acceptable, or 4) if based on the criteria for the selection of the best bid it is not possible to make the selection, or 5) in other cases specified in separate regulations.

Article 45 defines public contracts, for the purposes of this law, consisting of several activities, as well as the prohibition of choosing activities in an arbitrary manner in order to avoid the application of this law.

Article 46 defines the contents of the public contract.

Article 47 defines that before making the decision on the selection of the private partner and the signing of the public contract, the public body shall submit to the approving authority for approval the final draft of the public contract including the appendices which are integral parts thereof, which the stated authority must, on the basis of the assessment of compliance of the draft contract with this law and compliance with the tender documents, give its approval of the final draft contract within 30 days of its submission.

Article 48 defines the signing of the public contract, the persons authorized for signing, the form, the obligation of certification, takeover of pledges and guarantees and guarding the security instruments.

Article 49 defines the financing of PPP projects and concessions by banks and other financial institutions, conclusion of direct contract and obligations of the public partner arising from the direct contract.

Article 50 defines the procedure and limits of amendments to the public contract.

Article 51 defines the delegation of additional tasks to the concessionaire in public contracts for concessions for works.

Article 52 defines the stabilization clause and action of the contracting parties in the event of a detrimental change in regulations.

Article 53 defines the methods of terminating the public contract.

Article 54 defines the premature termination of the public contract due to default of the private partner, the reasons, method and consequences of the termination.

Article 55 defines the premature termination of the public contract due to default of the public partner, the reasons and consequences of the termination.

Article 56 defines the termination of the special-purpose vehicle and that, in the event of termination of the SPV, the facilities, equipment, plants and other assets from the scope of the PPP are handed over to the public partner. The concession relations can also be terminated by the acquisition of the concession under the conditions provided in the public concession contract and exceptionally, if this is necessary due to public interest, the acquisition of the concession may be performed under the conditions and in a manner prescribed in regulations on expropriation in which case the concessionaire shall be entitled to the payment of the full compensation according to its market value. The concession relation may be terminated by the withdrawal of the concession document which is made by the grantor, in case when the concessionaire not perform the concession activity for more than one year, does not perform the obligations undertaken by the contract, for reasons of public security, and in the case that the performance of the concession activity causes negative environmental or public health consequences, while the measures prescribed in special regulations are not sufficient to prevent such consequences, and under conditions prescribed in the public contract.

Article 57 defines that after the termination of the concession relations, the facilities, equipment, plants and other assets from the scope of the concession shall become the property of the Republic of Serbia, the autonomous province, or the local self-government unit. The concessionaire shall hand over the facility, equipment and plant, as well as other assets that are the subject of the concession, and which are the property of the Republic of Serbia, the

autonomous province, or the local self-government unit, free of any encumbrance and in a state which ensures their unhindered use and functioning.

Articles 58 and 59 define that legal protection in the public contract award procedure is ensured in accordance with the law regulating public procurement and that any person interested in participating or participating in the public contract award procedure on the basis of this law may lodge a request to the Republic Commission for the protection of rights against the decisions of the public body implementing the procedure which may be refuted separately, and which are illegal in the opinion of such person.

Article 60 defines the manner of resolving the disputes between the public partner and the private partner by arbitration or before the regular courts in the Republic of Serbia.

Article 61 defines the manner of exercising supervision over the implementation of contract, while providing for the adoption of a special document, which will regulate the procedure and manner of exercising supervision.

Article 62 defines the competence of the line ministry in charge of finance, or the authority of the autonomous province or of the local self-government unit in charge of finance, which may independently initiate the supervision procedure through inspection in accordance with its legal authority, as well as the obligation of public and private partners to participate in the specified activities and procedures.

Article 63 defines the obligation of the public partner to continually supervise and monitor the implementation of the public contract, collect periodical reports of the private partner, maintain separate records relevant to the operations of the private partner and maintain and archive the documentation relevant to the public contract.

Article 64 defines that the public partner is obliged to inform all relevant authorities and initiate appropriate procedures in connection with the observed defaults of the private partner and irregularities in its operation.

Article 65 defines the establishment of the Public-Private Partnership Commission (hereafter: Commission) by the Government at the proposal of: the office of the Prime Minister, the ministry in charge of economy and regional development, the ministry in charge of finance, the ministry in charge of infrastructure, the ministry in charge of mining and environmental protection, the autonomous province and the City of Belgrade.

Article 66 defines the resources and conditions for the work of the Commission.

Article 67 defines the appointment and end of office of members of the Commission.

Article 68 defines the competences of the Commission and that the Commission: 1) assists in the preparation of proposals for PPP in order to facilitate the development of public-private partnerships and public contracts; 2) provides information and consultation on issues of public-private partnerships and concessions; 3) gives its opinion in the procedure of approval of proposed PPP projects without elements of concession and in the procedure of proposing the concession document to the relevant authorities for approval; 4) identifies and facilitates the implementation of the international best practice for the Republic of Serbia in the field of public-private partnerships and concessions; 5) develops methodological materials in the field of public-private partnerships and concessions; 6) cooperates with other public administration institutions and with non-government organizations in the field of public-private partnerships and concessions; 7) at the request of the public body, or of the concession granting authority, provides recommendations on projects. 8) submits to the Government its annual report on projects implemented in accordance with this law in the Republic of Serbia; 9) cooperates with the authorities of the Republic of Serbia in charge of budget inspection, the

State Audit Institution, the services of the autonomous province and of the units of local self-government in charge of budget inspection and with other national and international authorities, organizations and institutions in the performance of tasks from within its competences; 10) publishes at its web-pages the annual report after it is endorsed by the Government, as well as other data and information which it deems relevant for the implementation of this law; 11) performs also other tasks in accordance with this law.

Article 69 defines that expert, administrative and technical tasks for the Commission shall be performed by the Ministry in charge of economy.

Article 70 defines the ownership of real property and expropriation.

Article 71 defines the lien on the subject of public contract, shares in the joint undertaking and similar, its non-transferability, as well as the obligation of notifying the relevant authorities of all pledges instituted.

Article 72 defines the foreign currency treatment of PPP with and without elements of concession.

Article 73 defines the treatment of found objects having cultural, historical and other value.

Article 74 defines the establishment of the Public Contract Register and grants authorization for the adoption of a rulebook determining the contents of the Register, the manner of registration and the persons authorized to access the Register.

Article 75 defines that procedures initiated until the day of entry into force of this law shall be completed in accordance with the regulations which were in force when they were initiated.

Article 76 defines the period for adoption of by-laws.

Article 77 defines when the Law on Concessions (Official Gazette of the Republic of Serbia, no. 55/2003) ceases to be in effect.

Article 78 regulates the coming into effect of the law.

IV. FUNDS NEEDED FOR THE IMPLEMENTATION OF THIS LAW

No additional funds from the budget are needed for the implementation of this law.

V. ANALYSIS OF ITS EFFECTS

Before the preparation of the Law on Public-Private Partnership and Concessions, a detailed analysis was made of the effects of the current Law on Concessions, as well as the effects and problems appearing in practice since the beginning of the application of the above mentioned law. Comparative-law solutions and experiences of the countries in the region and other international experiences, as well as the experiences of experts in the area regulated by the Law on Public-Private Partnership and Concessions (representatives of relevant ministries, lawyers, business people...) who have been applying the Law on Concessions in the previous nine years were used and analyzed in the preparation of the text of the law.

In order to solve the existing problems, the Ministry of Economy and Regional Development contacted the European Bank for Reconstruction and Development (EBRD) with a request for technical assistance in preparing a modern legislative framework for concessions and public-private partnership (PPP) in the Republic of Serbia. The Ministry also consulted the European Commission (ES) when preparing the subject Draft Law.

The Working Group began its work by an analysis of the existing system and the contracts concluded based on the Law on Concessions. Some of the solutions are a result of further intense consultations and focus groups and some represent a result of public debate.

In the first part of the report on the analysis conducted, we consider the context of the analysis.

The aspect of the need for instruments provided for by the Draft Law

Increased demands for new public infrastructure in the Republic of Serbia contributed to the consideration of the possibilities of private financing of public infrastructure projects. In addition, the lack of public financing and insufficient funds of the state authorities to develop and modernize the road and utility infrastructure such as water supply network and waste water management, district heating and electricity supply systems, led to the need for prompt establishment of necessary legal and economic mechanisms to attract private investments.

The Law on Concessions adopted in 2003 (Official Gazette of RS, no. 55/03) (hereinafter: Law) made the first step towards establishing basic principles for concession contracts. The Law, however, had its weaknesses because it could neither solve the problems arising in the implementation of concession projects nor provide certainty to the private capital of return on its investments. The weaknesses of the law governing concessions, combined with the lack of supporting regulations and institutional capacities, led to the termination of four out of the five concession contracts concluded after the application of the law was initiated, while a number of potential concession projects were not implemented at all.

1. Defining the problems that the law should solve

CLEARLY DEFINED RULES

The new law should provide clear definition of the extent/limits of its application, definition of concession and public-private partnership, competent state authorities as contracting parties, contract award procedure and other. New definitions of concession and public-private partnership, as well as simplification of the procedure for proposing and approving individual projects, which would all result in achieving a higher degree of legal certainty.

CLEARLY DEFINED RELATION TO OTHER LAWS

The following are considered as other laws for the purposes of this analysis:

- o Law on Public Procurement
- o Law on Public Enterprises and Performance of the Activities of Public Interest
- o Law on Public Utility Activities
- o Law on Energy
- o Law on Mining

o Other laws regulating the activities of public interest (for example: the Law on the Games of Chance, the Law on Waste Management, the Law on Public Roads and other)

The problem for the legal practice is that, in this moment, there are some current laws that enable contract award for the same activity, so it is not quite clear which procedure should be conducted (e.g. the Law on Concessions and the Law on Public Utility Activities). This leads to confusion among the state authorities regarding the selection of the valid law

that should be applied and creates a possibility for the state authority to decide in an opportunistic and discretionary manner to apply the procedure that it finds simpler, while not taking care whether the principle of transparency and competitiveness of the procedure conducted for the selection of private partner is observed.

2. The objectives to be achieved by adopting the law

The objectives of the legislative activity on the preparation of a modern legal framework on concessions/public-private partnership are:

- encouraging the application of public-private partnership (hereinafter: PPP) with the aim of building public infrastructure and providing services in public interest;
- providing quality services of public importance;
- a greater value for the invested (spent) money through optimizing efficiency, effectiveness and economy regarding total costs related to the ownership of public infrastructure and regarding the provision of services of public importance;
- creating an efficient mechanism that would allow all government levels to implement projects through public-private partnership based on clear rules;
- attracting domestic and foreign investors and banks to finance/co-finance and manage projects of public interest (participation of the private sector);
- providing a legal framework for a transparent and fair tender procedure with equal treatment of all bidders in the process of looking for a private partner for such projects;
- harmonization with the EU regulations, especially in the area of public procurement;
- compliance with international standards and the best international practice to the extent that is not contrary to the law of the European Union.

The achievement of these objectives will create a legal framework that encourages regulated and controlled freedom of contracting between public and private partners for the implementation of PPP projects with or without elements of concession.

3. Other possibilities for problem solving

Several relevant options have been considered during the analysis:

- 1) status quo – not changing the current Law on Concessions, and
- 2) adoption of the Law Amending the Law on Concessions, which would correct a part of the problems observed,
- 3) adoption of two laws: the Law on Public-Private Partnership and the Law on Concessions
- 4) adoption of a new law that would regulate both the area of public-private partnership in a wider sense and the area of concessions.

During the analysis of individual solutions in the Draft Law, the following was considered in two steps:

- in the first step, the need for changes in the provisions of the current law was considered,
- in the second step, if the changes were necessary, the relevant options were considered and the best solutions from the aspect of the set criteria were determined.

The reason why we did not opt for amendments to the existing law is that the monitoring of that law would be very difficult and the area of public-private partnership would still remain unregulated.

4. Why is the adoption of the law the best solution for solving the problems?

The adoption of the Law on Public-Private Partnership and Concessions would solve the problems that appeared in practice by applying the Law on Concessions and other laws. There was also a need for changing the existing system, as well as the need for regulating the issues that present a legal gap. In addition to the above mentioned, the need for harmonization with the legislation of the European Union, which was changed after the Law on Concessions came into effect, caused the comprehensive regulation of the areas that are the subject of the Draft Law to become necessary.

5. Who will the proposed solutions affect and how?

By their nature, the provisions of the Law on Public-Private Partnership and Concessions have an effect on all domestic and foreign companies, as well as entrepreneurs, and on the public authorities, as well as banks and other financial institutions. The proposed solutions will have a direct effect on:

- *Companies*
- *Entrepreneurs*
- *State authorities of the Republic of Serbia, authorities of autonomous province and local self-government units.*
- *a number of other interested parties*
- **The costs that the application of the law will cause for citizens and economic operators, especially small and medium-sized enterprises.**

The application of the law will reduce transaction costs, given that the principle of efficiency in implementing public-private partnership projects and the principle of greater value for money were introduced, which means that the budget funds will be used in a more efficient manner and that the services provided to citizens will be of a higher quality.

6. Do the positive effects justify the costs?

Given the extreme complexity of the Law, some of the main benefits of the proposed manner of regulating this area will be presented in this segment.

Each proposal for a PPP project with or without elements of concession must include:

1) a business plan, including the PPP conditions, a cost estimate and a value-for-money analysis, specifications of financial acceptability of the PPP to the public body, specifications regarding the project financing (from the budget, financing by international financial institutions, private financing and the cost of funds), the availability of funds and the planned risk distribution;

2) an analysis of economic efficiency of the proposed project;

3) types and amount of security instruments to be provided by the public partner;

4) a feasibility study of concession granting and an analysis as to why the proposed manner of implementation is more favorable to the public sector than the standard project financing from the budget.

7. Does the act stimulate the appearance of new economic operators in the market and market competition?

A large number of domestic and foreign economic operators is expected to be created for implementing PPP projects with or without elements of concession, especially given that the law stipulates the obligation of establishing a special-purpose vehicle, in the form of a corporation, for implementation of any project, given that the public partner needs to have a fully liable private partner registered in accordance with the regulations of the Republic of Serbia, with a sole obligation of implementing the PPP project.

8. Did the stakeholders have an opportunity to present their views?

The Ministry of Economy and Regional Development delivered the Draft Law for technical consultations to the City of Belgrade, Serbian Chamber of Commerce, Belgrade Chamber of Commerce, the Standing Conference of Towns and Municipalities, NALED, American Chamber of Commerce, the Foreign Investor Council, the European Bank for Reconstruction and Development – Belgrade Office, USAID and the Delegation of the European Union to Belgrade for comments, suggestions and remarks in the period from 18 July 2011 to 22 August 2011.

Many participants in the technical consultations delivered their comments, proposals and suggestions. The Working Group considered all received comments on the text of the Draft Law on Public-Private Partnership and Concessions, identified the possibility of integrating them with the aim of improving the Draft Law and incorporated many of the proposals into the text of the Draft Law, whereby the planned legal solutions were considerably improved.

VI. REASONS FOR ADOPTING THE LAW AS A MATTER OF URGENCY

In order to harmonize the regulations in the area of public procurement and concessions as soon as possible for the purpose of future negotiations with the European Union as part of Chapter 5, all with the aim of enabling the financing and implementation of public-private partnership projects with or without elements of concession in a transparent and efficient manner, substitution of standard financing of infrastructure projects from the budget wherever possible by project financing according to the principle of public-private partnership and in order to initiate promptly the preparatory actions of all state authorities for the implementation of this law by providing the funds for project implementation by the budget for the next year, it is necessary to adopt this law as a matter of urgency, in accordance with the Rules of Procedure of the National Assembly (Official Gazette of RS, nos. 52/10 and 13/11) in order to prevent harmful consequences to budget funds and the economy due to the inadequately regulated manner of managing natural resources and assets in general use.