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**ASSEMBLY OF THE REPUBLIC OF MACEDONIA**

On the basis of Article 75 paragraph 1 and 2 of the Constitution of the Republic of Macedonia, the President of the Republic of Macedonia and the President of the Assembly of the Republic of Macedonia issue

**A DECREE  
ON PROCLAMATION OF THE LAW ON CONCESSIONS AND PUBLIC PRIVATE  
PARTNERSHIP**

The Law on Concessions and Public Private Partnership is hereby proclaimed, which the Assembly of the Republic of Macedonia adopted at the session held on January 11, 2012.

No. 07-149/1  
11 January 2012  
Skopje

President  
of the Republic of Macedonia  
**Gjorgje Ivanov**

President  
of the Assembly of  
the Republic of Macedonia,  
**Trajko Veljanoski**

**LAW ON CONCESSIONS AND PUBLIC PRIVATE PARTNERSHIP**

CHAPTER I

GENERAL PROVISIONS

Article 1  
Subject

This law shall regulate the awarding of concession for goods of general interest and contracts establishing public private partnership, the legal protection for each person that has or had an interest in obtaining such a contract and that had risked or has a risk to be damaged in the

procedure for awarding such contracts, as well as other issues regarding the concessions for goods of general interest and contracts establishing public private partnership.

## Article 2

### Objective

The objective of this Law shall be to enable engagement in financing concessions for goods of general interest and contracts establishing public private partnership based on the principles of equality, transparency, non-discrimination, proportionality, mutual recognition, environmental protection and efficiency of the procedure for concluding contracts for concession for goods of general interest and contracts establishing a public private partnership, as well as quality and efficient realization of the works and services from the concluded concession contracts and contracts establishing a public private partnership.

## Article 3

### Application of provisions from chapters I, II, III, IV, V and VI

Provisions from chapters I, II, IV and V of this Law shall refer and be applied to the award and contracts establishing public private partnership and concessions for goods of general interest, whereas provisions from Chapter II of this Law shall exclusively refer and be applied to awarding concessions for goods of general interest, and provisions from Chapter VI of this Law shall exclusively refer and be applied to awarding contracts establishing public private partnership.

## Article 4

### Definitions

The meaning of the terms defined in the Law on Public Procurement shall accordingly apply to this Law as well, unless otherwise regulated by this Law.

Certain terms used in this Law shall have the following meaning:

1. "Public Works Concession" shall be a contract of the same type as a public works contract except that the remuneration for those works shall consist either solely of the right to exploit those works or in that right together with payment;
2. "Public Service Concession" shall be a contract of the same type as a public service contract except that the remuneration for those services shall consist either solely of the right to exploit those services or in that right together with payment;
3. "Concession for Goods of General Interest" shall be a contract different from the public work concession and the public service concession the subject-matter of which shall be awarding a right to use goods of general interest;
4. "Public Private Partnership" shall have the meaning as described further in this Law;

5. "Public Partner" shall be a legal entity that awards a contract establishing a public private partnership, as follows:

- the Republic of Macedonia,
- the municipality, the City of Skopje and the municipalities in the City of Skopje,
- the public enterprises, public institutions, companies established by the Republic of Macedonia, the municipality, the City of Skopje and the municipalities in the City of Skopje and companies over which the state or the bodies of the municipality, the City of Skopje and the municipalities in the City of Skopje have a direct or indirect influence through the ownership thereof, i.e. they own a major part of the company's capital, they have a majority of the shareholders'/partners' votes and they appoint more than a half of the members of the management or the supervisory board, i.e. the management bodies of the company and
- other legal entities that pursuant to the law perform public authorizations in the part of performance of public authorizations;

6. "Concession grantor" shall be a body awarding a concession for goods of general interest, as follows:

- the Republic of Macedonia and
- the municipality, the City of Skopje and the municipalities in the City of Skopje;

7. "Private Partner" shall be a domestic or foreign legal entity or natural person or consortium which concludes a contract establishing a public private partnership with the public partner or which for that purpose establishes a Special Purpose Company;

8. "Concessionaire" shall be a domestic or foreign legal entity or natural person or consortium with which a contract for concession for goods of general interest is concluded or which for that purpose establishes a Special Purpose Company;

9. "Economic operator" shall be any domestic or foreign legal entity or natural person or a group of such entities or persons offering supplies, services or works on the market;

10. "Tenderer" shall be any economic operator that has submitted a tender;

11. "Authorized signatory" shall be a person authorized by the public partner or the concession grantor to conclude a contract establishing a public private partnership or a contract for concession for goods of general interest;

12. "Competence" shall mean authorizations and duties and a reference to carry out the functions, as well as performing of duties of the concession grantor, that is the public partner,

13. "Special Law" shall be a law regulating the issues related to the concessions being awarded in the area regulated by that law;

14. "Special Purpose Company" shall be a company that may be established by the private partner or the concessionaire for the purpose of concluding a contract establishing a public private partnership or concession for goods of general interest and/or for realization of the public private partnership or concession for goods of general interest (hereinafter: SPC);

15. "Consortium" shall be a group of economic operators jointly submitting a tender or a request to participate, without simultaneously representing a special legal form;

16. "Acceptable Tender" shall be a timely submitted tender for which it is confirmed to fully meet all requirements in the tender documentation and technical specifications and matches all criteria, conditions and possible qualification requirements for the tenderers;

17. "Construction" shall be performance of construction activities or constructing a facility, design and conducting activities of construction or design and constructing a facility or realization, with any construction means that corresponds to the requirements determined by the public partner and which fulfils by itself a certain technical and economic function and

18. "Facility" shall be a result of construction or an existing public infrastructure in possession or owned by the public partner or a public infrastructure that shall be realized pursuant to the contract establishing a public private partnership.

## Article 5

### Public Private Partnership

Public Private Partnership shall imply a form of contractually regulated long-term cooperation between the public partner and the private partner, characterized by the following:

- a. private partner assumes the obligation to provide public services to end users within the area of public partner competence and/or the obligation to ensure the public partner necessary preconditions for the provision of public services to end users and/or activities within its area of competence;
- b. for the purpose of fulfilling the obligations from item a) of this paragraph, the private partner may take over the obligation to;
  - finance, design, construct or/and reconstruct/renovate public infrastructure facility, operate and maintain a newly constructed or/and reconstructed/renovated public infrastructure facility, or
  - use, operate and maintain an existing public infrastructure facility, or
  - any combination of the above mentioned obligations as long as the combination of those obligations is for the purpose of fulfillment of objectives set in item a) of this paragraph;
- c. in taking over the obligations from items a) and b) of this paragraph, the private partner usually assumes substantial part of the risks associated with financing, construction, demand and/or availability, and other such operations, management, maintenance and technical risks, depending on the contractual basis when establishing public private partnership and subject to case-by-case determination;
- d. notwithstanding item c) of this paragraph, each partner in a public private partnership shall, for the duration of the public private partnership, assume responsibility for risk events that are under his sphere of influence, or the responsibility is shared, for the purpose of achieving optimal risk management for the duration of the partnership, among other things by using managerial, technical, financial and innovative capabilities of the private partner and by promoting the exchange of skills and know-how between the public and the private partner;
- e. in exchange for the assumed obligations the public partner may award to the private partner a public works concession or a public service concession or remunerate the private partner by means of payment;
- f. the public partner may also enable the private partner to perform certain contractually defined commercial economic activities alongside the obligations from item a) and b) of

this paragraph, but only if there is no other possible way to ensure the necessary level of cost-efficiency of private participation and reasonable return on investment and

- g. the public partner may transfer certain material rights to the private partner necessary for the execution of the contractually set obligations.

Depending on the means of remuneration by the public partner for the provided public works and/or public services, as well as allocation of key inherent risks, a public private partnership can be established either as:

1. Public works concession, or
2. Public service concession or
3. Public works contract, or
4. Public service contract.

A public private partnership is established by contract.

## Article 6

### Combined contracts

In case of public works concessions and public service concessions involving both the element of works and services, i.e. combined contracts, the decisive element of determining if such a contract is a public works concession or a public service concession shall be whether the work to be carried out is the main subject of the contract, or whether the work is merely incidental to the principle subject matter of the contract.

## Article 7

### Awarding State Aid

When establishing the mutual rights and obligations between the public partner and the private partner or the concession grantor and the concessionaire, as well as during the realization of the subject matter contracts, the rules for awarding state aid must not be violated.

## Article 8

### Principles

The procedure for awarding concessions for goods of general interest and contracts establishing a public private partnership shall be implemented in accordance with the principles of transparency, non-discrimination, proportionality, efficiency, equal treatment and mutual recognition.

## Article 9

### Concession Fee

When the concessionaire or the private partner shall be obliged to pay a concession fee to the

concession grantor or to the public partner, the minimum amount of the concession fee shall be determined in the contract notice and on the basis of a feasibility study for justification of the award of a concession for goods of general interest or the contract establishing a public private partnership, unless otherwise stipulated by a special law.

## Article 10

### Exceptions of Application

The provisions of this Law regulating procedures for awarding concessions for goods of general interest shall not apply in case when the concession is awarded to the following entities:

- public enterprises, public institutions, companies established by the Republic of Macedonia, the municipality, the City of Skopje and the municipalities in the City of Skopje and companies over which the state or the municipal bodies, the City of Skopje and the municipalities in the City of Skopje have a direct or indirect influence through the ownership thereof, i.e. they own a major part of the company's capital, they have a majority of the shareholders'/partners' votes and they appoint more than a half of the members of the management or the supervisory board, i.e. the management bodies of the company.

The provisions determined by a special law shall be applied for the payment, i.e. the concession fee with regard to contracts under paragraph 1 of this Article.

## Article 11

### Ownership Right

Facilities constructed under a public private partnership, including the additions and improvements shall be owned by the public partner, unless otherwise provided for in the contract establishing a public private partnership.

In the tender documentation the public partner should envisage the conditions under which the ownership rights from paragraph 1 of this Article shall be regulated.

Following the termination of the contract establishing a public private partnership, the private partner shall be obliged to return, i.e. to transfer the ownership of the facilities constructed under the public private partnership to the public partner, regardless whether they have been entirely or partially constructed, reconstructed, preserved, equipped or improved by the private partner, under conditions and in a manner as set out in the contract establishing a public private partnership, unless otherwise stipulated.

All the issues, including conditions relating to ownership rights, as well as required quality standards, shall be a subject to analysis of the feasibility study for justification of the award of contracts establishing a public private partnership and set out in the tender documentation, as well as in the contract itself.

## Article 12

### Special Purpose Company

The Special Purpose Company may participate only in the realization of a public private partnership or concession for which it has been founded.

When the private partner or the concessionaire founds a SPC, the public partner or the concession grantor may conclude the contract establishing a public private partnership or concession for goods of general interest with a SPC.

By the decision on initiation of the procedure and in the tender documentation the public partner or concession grantor may determine for the legal entity or consortium, selected as the a winning tenderer, to found a legal entity with a seat in the Republic of Macedonia, which as a private partner or as a concessionaire shall conclude the contract establishing a public private partnership or the contract for concession for goods of general interest.

In the case from paragraph 3 of this Article the tender documentation shall determine the form of the legal entity (private partner or concessionaire), the capital amount, the obligations of the winning tenderer regarding its founding, as well as other relations between the winning tenderer, the legal entity – private partner or concessionaire and the public partner or concession grantor.

### Article 13

#### Public Private Partnership Council

The Government of the Republic of Macedonia shall establish a Public Private Partnership Council (hereinafter: Council) composed of 15 members, one of whom shall be President and another one shall be Deputy President of the Council.

The Council shall have an advisory role for the Government of the Republic of Macedonia in the public private partnership area, it shall promote public private partnership, propose public private partnership projects, as well as raise initiative with proposals for amending the regulations in this area.

Members of the Council shall be representatives from the Ministry of Economy, Ministry of Finance, Ministry of Transport and Communications, Ministry of Health, Ministry of Education and Science, Ministry of Agriculture, Forestry and Water Economy, Ministry of Environment and Physical Planning, Ministry of Culture, General Secretariat of the Government of the Republic of Macedonia - Office of the Vice President of the Government in charge of economic affairs and coordination of economic departments and institutions, Public Procurement Bureau, the Association of Local Self-Government Units, the business community, as well as independent experts particularly in the field of economy and law, having regard to the adequate and equitable representation of all national and ethnic groups in the Republic of Macedonia.

The Council shall adopt its Rules of Procedure.

The members of the Council shall have a four-year term of office.

The members of the Council shall receive remuneration for their work per session held.

The amount of the remuneration from paragraph 6 of this Article shall be determined by the Government of the Republic of Macedonia.

### Article 14

#### Competent Authority for Public Private Partnership

The Ministry of Economy shall be the competent authority for public private partnership and it shall perform the following tasks:

- developing and implementing measures and activities in order to achieve and maintain fully transparent and efficient system for public private partnership;
- keeping and maintaining the Register for the awarded contracts establishing a public private partnership
- preparing draft-proposals on amending the regulations in the area of public private partnership as well as instructions for implementing the provisions of this Law;
- organizing and realizing education and training in the public private partnership area for all participants in the process;
- monitoring, analyzing and providing expert assistance and opinion in the part concerning implementation of procedures;
- monitoring, analyzing and studying current European and global tendencies, knowledge and experience in the area of public private partnership and
- executing other works and assignments related to the public private partnership.

## Article 15

### Application of the Law on Public Procurement and Other Special Laws

The provisions from the Law on Public Procurement concerning award procedures for public works contracts and public service contracts shall be adequately applied to the award procedures for contracts establishing a public private partnership, unless otherwise provided by this Law.

When awarding a contract establishing a public private partnership, the public partner shall apply the open procedure, the restricted procedure, the negotiated procedure with prior publication of a notice or the competitive dialogue in accordance with the conditions and in a manner as set out in the Law on Public Procurement.

The public partner may opt not to use an electronic auction in awarding a contract establishing a public private partnership.

The provisions of this Law, as well as the provisions of the special laws shall apply to the award procedures for concessions for goods of general interest with a compulsorily adherence to the basic norms and principles stipulated in Article 8 of this Law.

## Article 16

### Preparatory Works for Awarding Concessions for Goods of General Interest and Contracts Establishing a Public Private Partnership

The preparatory works for awarding concessions for goods of general interest and contracts establishing a public private partnership shall be implemented by the concession grantor or the public partner.

The preparatory works shall particularly include:

- establishing the Commission for implementation of award procedure for concession for goods of general interest or contract establishing a public private partnership;



- preparation of a pre-analysis report on the basic project elements giving an indication on the nature of the contract which should be concluded for the purpose of establishing a public private partnership, taking into account the definition of a Public Private Partnership of this Law;
- preparation of a feasibility study for justification of the award of a concession for goods of general interest or a contract establishing a public private partnership;
- assessment of the influence of the concession for goods of general interest or the public private partnership over the environment and
- other activities necessary for the implementation of the procedure.

The Government of the Republic of Macedonia shall prescribe the contents of the feasibility study for justification of the concession for goods of general interest or the public private partnership.

## Article 17

### Procedure Initiation

In order to initiate the procedure for the award of concession for goods of general interest and contracts establishing a public private partnership, the concession grantor or the public partner shall adopt a decision on procedure initiation for awarding a concession for goods of general interest and contracts establishing a public private partnership.

The decision referred to in paragraph 1 of this Article shall be adopted by the concession grantor or the public partner on the basis of the study referred to in Article 16 paragraph 2 line 3 of this Law.

When the concession grantor or the public partner is the Republic of Macedonia, the decision referred to in paragraph 1 of this Article shall be adopted by the Government of the Republic of Macedonia upon a proposal of the Minister competent for the area in which the public private partnership or concession shall be awarded.

When the concession grantor or the public partner is the municipality, the City of Skopje or the municipality in the City of Skopje, the decision referred to in paragraph 1 of this Article shall be adopted by the Council of the Municipality, the Council of the City of Skopje or the Council of the Municipality in the City of Skopje, upon a proposal of the mayor of the municipality, the mayor of the City of Skopje or the mayor of the municipality in the City of Skopje.

When a public partner is one of the entities referred to in Article 4 item 5 lines 3 and 4 of this Law, the decision from paragraph 1 of this Article shall be adopted by the management body, and the founder shall give its consent on the decision.

## Article 18

### Contents of the Decision on Procedure Initiation

The decision for initiating a procedure for awarding a concession for goods of general interest or a contract establishing a public private partnership shall particularly contain the following:

- explanation of the justification for the award of a concession for goods of general interest or a contract establishing a public private partnership, including an exposition on the grounds for

identification of the contract type, taking into account the definition of a public private partnership of this Law,

- designation of its objectives,
- subject of the concession for goods of general interest or the public private partnership and the basic conditions for awarding a concession for goods of general interest or a contract establishing a public private partnership,
- in case of contracts establishing a public private partnership, the type of procedure from the Law on Public Procurement, taking into consideration Article 15 of this Law,
- the manner and deadline in which the award procedure shall be implemented and
- the amount of the fee for issuance of the tender documentation.

## Article 19

### Contents of the Contract Notice for contracts establishing a Public Private Partnership

The awarding of a contract establishing a public private partnership shall be carried out by a notice.

The form, content and manner of publishing the contract notice for public private partnership established as a public works contract or a public service contract shall be pursuant to the Law on Public Procurement and its bylaws.

The form and content of the contract notice for public private partnership established as a public works concession or as a public service concession shall be prescribed by the Government of the Republic of Macedonia and it shall be published pursuant to the Law on Public Procurement.

The contract notice for public private partnership established as a public works concession and public service concession shall contain in particular the following data:

1. Name, address, fax number and e-mail of the public partner;
2. (a) Place of execution and  
(b) Subject of a public works concession or public service concession, nature and scope of the works and/or services as well as explanation of the justification for the award of public works concession or public service concession and designation of the objectives;
3. (a) Time limit for the submission of applications,  
(b) Address to which they must be sent and  
(c) Language in which they must be written;
4. Type of contract award procedure, in accordance with Article 15 of this Law;
5. Tender documentation fee;
6. Personal, technical and financial conditions to be met by the candidates;
7. Criterion which shall be applied in the award of the contract;
8. If necessary, a minimum proportion of the works which shall be awarded to third parties, regulated in accordance with the contract referred to in Article 48 of this Law;
9. If necessary, the minimum amount of the concession fee and/or the manner in which the concession fee is calculated;
10. Publication date of the notice;
11. Name and address of the competent authority for resolving appeals, information on the deadlines for lodging appeals, or should it be necessary the name, address, telephone number, fax number and e-mail of the person from whom this information may be obtained.

It shall be considered that the contract award procedure for the award of contracts establishing a public private partnership established as a public works concession and public service concession has been initiated as of the day of the notice publication.

The Public Procurement Bureau shall charge a fee for publishing the notices referred to in this Article in the amount of EUR 100 in Denar equivalent calculated on the middle exchange rate of the National Bank of the Republic of Macedonia on the day of payment.

## Article 20

### Commission for Procedure Implementation

The award procedure for concession for goods of general interest and contracts establishing a public private partnership shall be implemented by the Commission for Procedure Implementation (hereinafter: Commission), formed by the Government of the Republic of Macedonia upon proposal of the minister in charge of the area in which the contract is awarded or by the mayor of the municipality, the mayor of the City of Skopje or the mayor of the municipality in the City of Skopje, or by the management body at the entities referred to in Article 4 item 5 lines 3 and 4 of this Law.

The Commission referred to in paragraph 1 of this Article shall consist of a president and at least four members and their deputies, from the ranks of law, economy, technical sciences and other relevant field experts, depending on the subject of the contract. External experts may participate in the work of the Commission, without a right to vote.

The members of the Commission cannot be persons who:

- have marital relation, family relation up to the second generation, or adoption or custodial relation with the tenderer or the candidate, with his/her legal proxy, and in the cases when the tenderer or the candidate is a legal entity with members of its administrative, supervisory or other authorities;
- have been employed or have been members of the management bodies or the supervisory bodies of the tenderer or the candidate in the course of the last three years;
- are in any other legal relation with the tenderer or the candidate and
- have been convicted on the grounds of a financial offence, fraud or corruption.

In the sessions, the Commission shall work in full composition and it shall adopt the decisions with majority of votes.

## Article 21

### Competences of the Commission

The Commission shall perform the following:

- preparing the tender documentation, including contract draft;
- determining the contract award criteria;
- organizing receipt of the requests to participate and tenders;
- determining the candidates' qualification and selecting candidates entitled to further participation in the procedure;

- determining the qualification of the tenderers;
- providing clarifications and delivering further information and documents;
- examining and evaluating the tenders and ranking the tenderers with a proposal that the first-ranked tenderer be selected;
- preparing a report on the evaluation of tenders;
- submitting a proposal for cancellation of the procedure and
- conducting all other activities necessary for the procedure implementation.

## CHAPTER II

### PROCEDURE FOR AWARDING A CONCESSION FOR GOODS OF GENERAL INTEREST

#### Article 22

##### Tender Documentation

The Commission shall be obliged to prepare the tender documentation within a deadline stipulated by the decision on initiating the award procedure for concession for goods of general interest.

The Commission may entrust the preparation of the tender documentation to a scientific or expert organization or to experts from the relevant area.

The drafter of the tender documentation cannot participate as a tenderer in the procedure for which it has been instructed to carry out research, experiments, studies or development in connection with subject matter contract.

The Commission may determine that the data or a part of the data contained in the tender documentation is considered confidential pursuant to the Law on Classified Information. In such case, the participants in the procedure shall be obliged to submit a statement, attached to the documentation with which they shall be obliged not to publish the data considered confidential.

The Government of the Republic of Macedonia upon proposal of the minister competent for the area for which the concession for goods of general interest shall be awarded, i.e. the mayor of the municipality, the mayor of the City of Skopje or the mayor of the municipality in the City of Skopje shall approve the tender documentation.

#### Article 23

##### Contents of the Tender Documentation

Depending on the nature of the concession for goods of general interest, the tender documentation shall particularly contain the following elements:

- Name, address, telephone number, fax number and e-mail of the concession grantor,

- Subject of the concession for goods of general interest,
- Objective of the concession for goods of general interest,
- Place and location at which the concession for goods of general interest shall be awarded,
- Instructions regarding the preparation and submission of the tender,
- Period for which the concession for goods of general interest shall be awarded,
- Deadline for submitting the tenders,
- Validity deadline of the tender,
- Address at which the tenders shall be submitted,
- Types of guarantees and conditions of the guarantees,
- Language in which the tenders should be written,
- Personal, professional and financial conditions that must be met by the tenderers and the documents proving the fulfillment thereof,
- Criteria according to which the selection of the winning tender shall be carried out,
- Name and address of the competent authority for deciding upon appeals and deadlines for lodging appeals,
- If applicable, the minimum amount of the concession fee and/or the manner in which the concession fee is calculated and
- Other substantial information concerning the subject of the concession for goods of general interest in compliance with other regulations and expert rules.

#### Article 24

##### Amending and Modifying the Tender Documentation

The concession grantor may amend and modify the tender documentation pursuant to the provisions of this Law, provided that the amendments are not of crucial importance and that they are available to the interested participants 15 days prior to the expiry of the final deadline for submitting the tenders at the latest.

If considered necessary by the concession grantor, the time limit for the submission of tenders may be extended in compliance with the amendments to the tender documentation.

#### Article 25

##### Tender Documentation Fee

The concession grantor may charge a fee to the tenderers for issuance of the tender documentation.

## Article 26

### Additional Questions Concerning the Tender Documentation

The Commission shall be obliged to respond to all the additional questions concerning the tender documentation posed by those economic operators that have collected the tender documentation if these questions have been submitted within 14 days prior to the expiry of the deadline for submitting the tenders.

The Commission shall be obliged to deliver the responds to the posed questions to all the economic operators that have collected the tender documentation, without mentioning the name of the economic operator that posed the question, but no later than 7 days prior to the expiry of the deadline for submitting the tenders.

## Article 27

### Guarantee for Participation in the Procedure

The participation in the tender submitting procedure shall be conditioned by providing a guarantee from the tenderer in the form of deposited funds or a bank guarantee the value of which shall not be less than 0.25% of the estimated value stipulated in the tender documentation.

The concession grantor shall be obliged to return the deposited amount, i.e. the guarantee for participation in the procedure, to the other tenderers that have participated in the procedure for concession within seven days following the conclusion of the contract for concession for goods of general interest with the winning tenderer.

The guarantee for participation in the procedure of the winning tenderer shall be valid until the moment of concluding the contract, i.e. until the submission of the guarantee for quality execution of the contract provided that it is thus stipulated in the tender documentation.

The guarantee referred to in paragraph 1 of this Article shall be charged in favour of the concession grantor should the winning tenderer refuse the invitation to conclude a contract for concession for goods of general interest and should he/she fail to sign the contract, and should he/she withdraw the tender prior to the expiry of its validity period.

## Article 28

### Public Call for Awarding a Concession for Goods of General Interest

The award of a concession for goods of general interest shall be carried out by means of a public call.

The public call for awarding a concession for goods of general interest shall particularly contain the following data:

1. Subject of the concession for goods of general interest:
  - nature and elements of the concession for goods of general interest and
  - place and location at which the concession for goods of general interest shall be awarded;

2. Duration of the period for which a concession for goods of general interest is awarded;
3. Deadline for submitting the tenders;
4. Address at which the tenders shall be submitted;
5. Language in which the tenders should be written;
6. Criteria according to which the selection of the winning tender shall be carried out and
7. Name and address of the competent authority for resolving appeals and deadlines for submitting appeals.

The public call for awarding a concession for goods of general interest may also contain other data stipulated by a special law.

The public call for awarding a concession for goods of general interest shall be published in the "Official Gazette of the Republic of Macedonia", but it may also be published in a domestic or foreign daily newspaper and on the web-page of the concession grantor.

#### Article 29

##### Manner of Submitting Tenders

The tender shall be submitted in a manner and form stipulated in the tender documentation.

The economic operators having collected the tender documentation shall have the right to submit tenders.

The tenderer may submit only one tender.

#### Article 30

##### Deadline for Submitting Tenders

The deadline for submitting the tenders shall be at least 30 days as of the day of publication of the public call for awarding the concession for goods of general interest in the "Official Gazette of the Republic of Macedonia".

#### Article 31

##### Criteria for Selection of the Winning Tender

A criterion for selection of the winning tender may be the following:

1. Economically most advantageous tender containing elements related to the subject of the concession for goods of general interest such as the following:

- quality,
- technical characteristics,

- aesthetic, functional and environmental characteristics and
  - other elements defined in the special law regulating the subject of the concession,
- or

2. The highest offered concession fee.

The elements of the economically most advantageous tender criterion, as well as the maximal number of points for each element separately must be clearly defined in the public call, to be specifically related to the subject of the concession for goods of general interest and once they are determined, they cannot be changed throughout the overall duration of the award procedure for the contract for concession for goods of general interest.

When the winning tender is selected based on the criterion of the economically most advantageous tender, the concession grantor shall be obliged to provide an explanation in the tender documentation as to how the elements of this criterion shall be valued and applied.

Each element of the economically most advantageous tender criterion shall bring a maximal number of points which shall be determined in the public call, and in exceptional cases when that is not possible, the elements shall be listed according to the order of their importance.

## Article 32

### Public Opening of the Tenders

Following the expiry of the deadline for submitting tenders, the Commission shall publicly open the tenders in the presence of authorized representatives of the tenderers, at place and time as stipulated by the public call for awarding a concession for goods of general interest.

The Commission shall prepare minutes for the public opening of the tenders.

## Article 33

### Evaluation of Tenders

The Commission shall conduct an evaluation of tenders only for those tenderers fulfilling the personal, professional and financial conditions determined by the tender documentation.

The Commission shall establish a list of tenderers based on the criteria stipulated in the public call for awarding a concession for goods of general interest, i.e. in the tender documentation and shall make a proposal for the selection of the most advantageous tenderer or a proposal for cancellation of the procedure for awarding a concession for goods of general interest.

## Article 34

### Evaluation Report

For each procedure for awarding a concession for goods of general interest, the Commission shall prepare a written evaluation report with a proposal for the selection of the most advantageous tender that shall be signed by the President and members of the Commission



and it shall be submitted to the concession grantor.

#### Article 35

##### Decision on the Winning Tender Selection

On the basis of the Commission's proposal and evaluation report, the concession grantor shall adopt a decision on the winning tender selection.

The decision on selecting the winning tender along with a copy of the minutes with a review and assessment of the tender and the evaluation report shall be delivered to each tenderer without delay, in a manner by which the delivery can be proved.

The concession grantor must not sign the contract for concession for goods of general interest prior to the expiry of the deadline for lodging an appeal.

The deadline for lodging an appeal shall be determined in the decision on the winning tender selection in accordance with the data from the public call for awarding a concession for goods of general interest.

The contract for concession for goods of general interest may be signed when the decision on the winning tender selection shall become final.

The decision on the winning tender selection shall be published in the "Official Gazette of the Republic of Macedonia".

#### Article 36

##### Deadline for Adopting a Decision on the Winning Tender Selection

The deadline for adopting a decision on the winning tender selection shall begin as of the expiry date of the deadline for submission of tenders. Unless otherwise stipulated in the tender documentation, the deadline for adopting a decision on the winning tender selection shall be 30 days.

Should the concession grantor fail to adopt a decision on the winning tender selection and fail to submit it to the tenderer within the prescribed deadline, the tenderer shall have a right to appeal due to disobedience of legal deadlines.

#### Article 37

##### Content of the Decision on the Winning Tender Selection

The decision on the winning tender selection shall contain:

- name of the concession grantor with number and date of the decision on procedure initiation for awarding a contract for concession for goods of general interest,
- explanation of the reasons for selecting the winning tenderer,
- name of the tenderer with number and date of the tender submission,
- subject of the concession for goods of general interest,
- place of performing the subject of concession for goods of general interest,
- duration of the contract for concession for goods of general interest,

- special conditions determined in the tender documentation which the tenderer should meet during the duration of the concession for goods of general interest,
- the amount of the concession fee paid by the concessionaire for the awarded concession for goods of general interest or the basis for determining the amount of concession fee that has to be paid by the concessionaire, provided it is envisaged,
- the deadline in which the winning tenderer is obliged to sign the contract for concession for goods of general interest with the concession grantor,
- competent authority for concluding the contract for concession for goods of general interest,
- competent authority for implementing and performing supervision over the awarded concession for goods of general interest and
- instruction of legal remedy.

The decision on the winning tender selection may contain other data in compliance with the tender documentation and the submitted tender.

### Article 38

#### Decision on Cancellation of the Procedure for Awarding a Concession for Goods of General Interest

The concession grantor shall cancel the procedure for awarding a concession for goods of general interest, if:

- any circumstances arise, provided they had been known prior to the initiation of the concession for goods of general interest award procedure then the public call for awarding the concession for goods of general interest would not have been published or the public call would have essentially differentiated, or
- there is no received tender by the expiry of the deadline for submitting tenders, or
- no acceptable tender has been submitted.

The concession grantor may cancel the procedure for awarding a concession for goods of general interest if until the expiry of the deadline for submitting tenders only one tender is received, i.e. if during the evaluation of the tenders only one acceptable tender remains.

The concession grantor shall be obliged without delay to deliver to each tenderer the decision on cancellation of the procedure for awarding a concession for goods of general interest with a copy of the minutes and the evaluation report, in a manner by which the delivery can be proved.

The deadline of 15 days for lodging an appeal shall begin as of the date of delivery of the decision on cancellation of the procedure for awarding a concession for goods of general interest to each tenderer.

New procedure for awarding a concession for goods of general interest may be initiated once the decision on cancellation of the concession award procedure has become final.

The decision on cancellation of the procedure for awarding a concession for goods of general interest shall be published in the "Official Gazette of the Republic of Macedonia".

### CHAPTER III

#### CONTRACT FOR CONCESSION FOR GOODS OF GENERAL INTEREST AND CONTRACT ESTABLISHING A PUBLIC PRIVATE PARTNERSHIP

## Article 39

### Contract Period

All contracts stipulated by this Law shall be concluded for a period of up to 35 years, calculated as of the day of concluding the contract, i.e. as of the day of entering into force of the contract, if this date differs from the former one, unless otherwise provided by a special law.

When determining the deadline referred to in paragraph 1 of this Article, the financial and economic indicators and the technical and/or technological specifics of the subject of the contract shall be taken into consideration, on the basis of a feasibility study of the justification for awarding the concession for goods of general interest or the contract establishing a public private partnership.

## Article 40

### Conclusion of Contract

The contract for concession for goods of general interest or contracts establishing a public private partnership shall be signed by the concession grantor i.e. the public partner and the selected winning tenderer.

All contracts stipulated by this Law shall be drawn up in compliance with the tender documentation, the contract notice or the public call, as well as the decision on the winning tender selection.

The Government of the Republic of Macedonia may authorize a minister from the relevant area to conclude the contract for concession for goods of general interest and the contract establishing a public private partnership on behalf of the Government of the Republic of Macedonia.

The Council of the municipality, the Council of the City of Skopje and the Council of the municipality in the City of Skopje may authorize the mayor to conclude the contract for concession for goods of general interest and the contract establishing a public private partnership.

Should the selected winning tenderer renounce the conclusion of the contract, the concession grantor i.e. the public partner may conclude the contract with the second ranked tenderer.

The Government of the Republic of Macedonia shall prescribe the content of all contracts stipulated by this Law.

## Article 41

### Amendments to the Contract

Contracts stipulated by this Law may be amended by concluding an Annex to the contract, provided that this possibility is expressly envisaged in the tender documentation.

The Annex to the contract shall be concluded by the authority representing the concession grantor or the public partner.

The Annex to the contract may be concluded upon initiative of the concession grantor or the public partner particularly in the following cases:

- endangering the national security and defense of the country, endangering the environment, the nature and the human health and the public order facilities,
- collapse of the concession facility or the public private partnership facility, or when there is an objective impossibility for its usage, in case of Force Majeure,
- during change of adequate regulations,
- other cases leading to change in the factual or legal basis for using the facility or provision of services, or in the concession activity performance, and
- other cases determined by special laws.

Changes to the essential terms of the contract not provided for in the tender documentation shall require implementation of a new contract award procedure.

Without infringing upon the provision under Article 47 of this Law, the term “essential terms” shall particularly refer to such conditions which, had they been included in the initial contract notice or in the tender documentation, would have made it possible for the tenderers to submit an essentially different tender, as well as had the changes surpassed the scope of the contract to that extent that these changes would have encompassed the services not initially covered.

## Article 42

### Transfer

The contract for concession for goods of general interest or contract establishing a public private partnership may be transferred by a written consent from the concession grantor or the public partner, under the terms and conditions determined in the contract and without infringing upon the duration of the contract, unless otherwise regulated by a special law.

The contract for concession for goods of general interest or contract establishing a public private partnership may envisage transfer of the rights and responsibilities of the concessionaire or the private partner of the contract on the benefit of the lenders, as a means of providing their claims from the concessionaire or the private partner, provided it does not jeopardize the continual work and/or service provision and quality performance of the activity, as well as the price.

In case of transfer of the contract for concession for goods of general interest or the contract establishing a public private partnership, the concession grantor or the public partner shall conclude a transfer contract with the entity to which the contract for concession for goods of general interest or contract establishing a public private partnership is being transferred, under conditions and in a manner determined in the existing contract for concession for goods of general interest or contract establishing a public private partnership.

The transfer of shares or stakes from the concessionaire or the private partner to the special purpose company (SPC) for performing the concession or public private partnership cannot be performed without a written consent of the concession grantor or the public partner.

## Article 43

### Cases of Termination of a Concession and a Public Private Partnership

The concession or the public private partnership shall be terminated by:

- the expiry of the validity period of the contract for concession for goods of general interest or the contract establishing a public private partnership,
- unilateral termination of the contract for concession for goods of general interest or the contract establishing a public private partnership by the concession grantor or the public partner,

- unilateral termination of the contract for concession for goods of general interest or the contract establishing a public private partnership by the concessionaire or the private partner,
- consensual termination of the contract,
- bankruptcy or liquidation of the concessionaire or the private partner, unless otherwise provided by the contract for concession for goods of general interest or the contract establishing a public private partnership and
- other cases envisaged by law and by the contract for concession for goods of general interest or the contract establishing a public private partnership.

#### Article 44

##### Unilateral Termination of the Contract for Concession for Goods of General Interest or the Contract establishing a Public Private Partnership by the Concession Grantor or the Public Partner

In case of significant breach of the responsibilities by the concessionaire or the private partner envisaged in the contract, the concession grantor, i.e. the public partner may unilaterally terminate the contract pursuant to the provisions of this Article.

The unilateral termination of the contract referred to in paragraph 1 of this Article may occur when:

- the activity transferred with the contract shall be performed in an inadequate or non-quality manner, having regard to the rules, parameters and other conditions determining the adequate performance of the activity determined by the contract,
- the concessionaire or the private partner in other manner has made a substantial breach of the provisions of the contract or of the laws and regulations applied to the contract,
- the concessionaire or the private partner has terminated or caused a termination of the activity performance,
- the concessionaire or the private partner has lost the economic, technical or operational capacities necessary for performing the activity pursuant to a special law and contract, and
- the concessionaire or the private partner did not act upon the stipulated measures in the supervision procedure implemented pursuant to a special law.

The unilateral termination shall be performed by decision of the concession grantor or the public partner stating the reasons for the termination of the contract and the rights of the concessionaire or the private partner after the adopted decision.

The concession grantor or the public partner shall be obliged, within a deadline of 15 days before adopting the decision on termination of the contract, to inform the concessionaire or the private partner in a written form about the breaches from paragraph 2 of this Article and to call upon them to correct the misconducts in order to provide adherence to the contract within the deadline determined by the notification. The deadline must be sufficient to enable the concessionaire or the private partner to act upon the notification.

#### Article 45

##### Unilateral Termination of the Contract for Concession for Goods of General Interest or the Contract establishing a Public Private Partnership by the Concessionaire or the Private Partner

In case of a substantial breach of the responsibilities by the concession grantor or the public partner envisaged in the contract, the concessionaire or the private partner may unilaterally terminate the contract pursuant to the provisions of this Article.

The unilateral termination of the contract referred to in paragraph 1 of this Article shall occur when:

- the concession grantor or the public partner shall not meet the obligations resulting from the contract, and
- the concession grantor or the public partner in a different manner has performed a substantial breach of the provisions of the contract or of the laws and regulations applied to the contract.

The concessionaire or the private partner shall be obliged, within a deadline determined in the contract, before the unilateral contract termination, to inform the concession grantor or the public partner in a written form about the breaches from paragraph 2 of this Article and to call upon them to correct the misconducts in order to provide adherence to the contract within the deadline determined by the notification.

Upon the expiry of the deadline referred to in paragraph 3 of this Article, provided that the concession grantor or the public partner has not eliminated the determined breaches, the contract shall be considered terminated.

#### Article 46

##### Consensual Termination of the Contract for Concession for Goods of General Interest or the Contract establishing a Public Private Partnership

The concession grantor or the public partner and the concessionaire or the private partner may consensually terminate the contract due to a breach of the contractual obligations by the concession grantor or the public partner, i.e. the concessionaire or the private partner pursuant to the valid regulations and according to the provisions of the contract.

#### Article 47

##### Rules for Awarding Additional Works and Services to Public Works Concessionaires and Public Service Concessionaires

In case of public works concession or public service concession, the public partner may, without conducting a new award procedure, award additional works or services which were not included in the basic contract but which have, due to unforeseen circumstances, become necessary for the performance of the work or service described therein, which the public partner has awarded to the private partner, on condition that the award is made to the private partner performing such work:

- when such additional works or services cannot be technically or economically separated from the basic contract without major inconvenience to the public partner, or
- when such works or services, although separable from the performance of the basic contract, are strictly necessary for its completion.

The value of contracts awarded for additional works or services cannot exceed 50 % of the value of the basic contract for public works concession or public service concession.

#### Article 48

##### Subcontracting

The public partner may require:

- from the private partner to award contracts representing minimum 30% of the total value of the contract establishing a Public Private Partnership, implemented as a public works concession or public service concession, to third parties, at the same time providing a

possibility to the tenderers to increase this minimal percentage that is specified in the contract, or

- from the tenderers to indicate in their tenders the percentage of the total value of the contract establishing a Public Private Partnership which they plan to award to third parties.

#### Article 49

##### Planning of Funds

The total amount of funds for which the public partner may assume financial obligations in the given year related to the contract establishing a public private partnership should be determined by the budget of the public partner.

When adopting the budget, the public partner must take into consideration the following:

- the expenses needed to cover the obligations resulting from the contracts establishing a public private partnership,
- the effects of rewarding, temporary suspension (cancellation) or limiting the venture, which may result from the contracts establishing a public private partnership and
- the compensation expenses (compensation) for the private partner, which may result from the contract establishing a public private partnership.

#### Article 50

##### Request for Approving Funds

Should on the basis of the feasibility study of the justification for awarding a contract establishing a public private partnership be determined that financial means from the Budget of the Republic of Macedonia are necessary for the realization of the contract establishing a public private partnership, it shall be necessary to obtain a consent from the Ministry of Finance thereof prior to adopting the decision on procedure initiation.

#### Article 51

##### Applying the Law on Obligations

For all issues concerning contracts stipulated by this Law that are not regulated by this Law, the provisions of the Law on Obligations shall be applied.

#### Article 52

##### Rules Applied to the Works Contracts Awarded to Third Parties by Private Partners Conducting a Public Private Partnership established as a Public Works Concession

These rules shall apply to private partners conducting a public private partnership established as a public works concession which are not contracting authorities pursuant to the Law on Public Procurement.

When a private partner conducting a public private partnership established as a public works concession awards works contracts of an estimated value over EUR 3,000,000 in Denar equivalent, excluding Value Added Tax (VAT), he/she shall apply the following rules:

1. The private partner conducting a public private partnership established as a public works concession shall compulsorily publish a contract notice in the "Official Gazette of the Republic of Macedonia" on the intent to award works contract to third parties in a form prescribed by the Government of the Republic of Macedonia;
2. The deadline for submitting the requests to participate shall be set out by the private partner and it must not be shorter than 37 days as of the day of publishing the contract notice;
3. The deadline for submitting the tenders shall be set out by the private partner conducting a public private partnership established as a public works concession and it must not be shorter than 40 days as of the day of publishing the contract notice, i.e. from submitting the invitations to submit tenders;
4. By exception of items 2 and 3 of this paragraph, in case when the request to participate and the tenders are submitted via electronic means, the Law on Public Procurement shall accordingly be applied for shortening the deadlines stated in items 2 and 3 of this paragraph and
5. The deadlines for submitting requests to participate and tenders shall be extended in a manner in which all interested legal entities and natural persons can obtain all information necessary, in the following cases:
  - if the tender documentation and all additional information are not provided in the envisaged deadlines or
  - if visit and insight on the construction location and of the place where all documents necessary for preparing the tenders are located are not provided.

The value of contracts referred to in paragraph 1 of this Article shall be calculated in accordance with the provisions regulating public procurement.

Groups of companies founded for the purpose of obtaining the contract establishing a public private partnership established as a public works concession referred to in paragraph 1 of this Article, as well as companies associated with them, shall not be considered as third parties in view of this Article.

Associated company shall mean a company:

- upon which the private partner conducting a public private partnership established as a public works concession has direct or indirect dominant influence,
- which can exercise dominant influence over the private partner conducting a public private partnership established as a public works concession or
- which along with the private partner conducting a public private partnership established as a public works concession is subject to dominant influence of other company.

Dominant influence shall exist when one entity, directly or indirectly:

- is owner of the majority of the capital in the other entity,
- controls the majority of votes on the basis of shares and stakes issued by the other entity, or



- can appoint more than half of the members in the management bodies or in the supervisory board.

The complete list of such companies shall be included in the tender submitted in the award procedure for a contract establishing a public private partnership established as a public works concession. This list shall be updated if there are subsequent changes in the relations between the companies.

## CHAPTER IV SUPERVISION

### Article 53 Supervision

The concession grantor and the public partner shall perform constant and regular supervision over the implementation of the concession for goods of general interest or the contract establishing a public private partnership and the realization of the awarded contract in question, as well as meeting the obligations by the concessionaire or the private partner, pursuant to the law and the contract in question.

## CHAPTER V LEGAL PROTECTION

### Article 54 Legal Protection

The review procedures to all contract award procedures pursuant to this Law shall be provided in compliance with the Law on Public Procurement.

## CHAPTER VI REPORT AND REGISTER OF AWARDED CONTRACTS

### Article 55 Report on Uncompleted Procedure

For each initiated but uncompleted award procedure for contracts establishing a public private partnership, the competent authority for implementing the subject contract shall prepare a written report and it shall submit it to the Ministry of Economy.

The Government of the Republic of Macedonia shall prescribe the form and contents of the report referred to in paragraph 1 of this Article.

## Article 56

### Register of Awarded Contracts

A register shall be kept for all contracts establishing a public private partnership awarded pursuant to this Law.

The register referred to in paragraph 1 of this Article shall be kept by the Ministry of Economy.

Within a deadline of 30 days as of the day of concluding the contract, the data for each awarded contract referred to in paragraph 1 of this Article shall be submitted on a special form to the Ministry of Economy.

The register shall be published on the web page of the Ministry of Economy.

The Government of the Republic of Macedonia shall prescribe the form, contents and the manner of keeping the register referred to in paragraph 1 of this Article and the form and contents of the form referred to in paragraph 3 of this Article.

## Article 57

### Notification on Changes in the Contract

The public partner shall be obliged to report all changes regarding the contract in question to the Ministry for Economy in the form under Article 56 of this Law, within a deadline of 30 days as of the day of the established changes in the contract establishing a public private partnership.

## CHAPTER VII TRANSITIONAL AND FINAL PROVISIONS

## Article 58

### Application of Provisions

The provisions from the Law on Concessions and Other Types of Public Private Partnership ("Official Gazette of the Republic of Macedonia", No. 7/2008, 139/2008, 64/2009 and 52/10) shall apply to the award procedures for concessions for goods of general interest and for contracts establishing a public private partnership, as well as to review procedures initiated prior to the commencement of application of this Law, as well as to contracts concluded prior to the commencement of application of this Law.

## Article 59

### Regulations on Enforcement of the Law

The bylaws laid down by this Law shall be adopted within a deadline of three months starting as of the day of entering into force of this Law.

Article 60  
Compliance Obligation

The special laws in the field of concessions shall be harmonized with the provisions of this Law within 6 months starting as of the day of entering into force of this Law.

Article 61  
Continuation of the Work of the Public Private Partnership Council

The Public Private Partnership Council established pursuant to the Law on Concessions and Other Types of Public Private Partnership (“Official Gazette of the Republic of Macedonia” No. 7/2008, 139/2008, 64/2009 and 52/10) shall continue to work pursuant to the provisions of this Law until the establishment of the Council in accordance with this Law.

The members of the Council shall be appointed within 30 days as of the day of commencement of application of this Law.

Article 62  
Obligation for Submitting Data

For all public private partnership contracts concluded pursuant to the Law on Concessions and Other Types of Public Private Partnership (“Official Gazette of the Republic of Macedonia” No. 7/2008, 139/2008, 64/2009 and 52/10) the entities referred to in Article 4 item 5 of this Law shall be obliged to submit data thereof to the Ministry of Economy within 6 months as of the day of entry into force of this Law.

Article 63  
Termination of Application

The validity of the Law on Concessions and Other Types of Public Private Partnership (“Official Gazette of the Republic of Macedonia” No. 7/2008, 139/2008, 64/2009 and 52/10) shall terminate on the day of commencement of application of this law.

Article 64  
Entry into Force

This Law shall enter into force on the eighth day following the publication in the “Official Gazette of the Republic of Macedonia”, and its application shall commence on 15 March 2012.