

DECISION
on the approval of the Regulations regarding standard procedures and
general requirements for private partner selection

No. _____ of _____

In order to meet the provisions of the art.11 and letter b), c) and d) of the Law on public-private partnership No. 179 of 10 July 2008 (Monitorul Oficial Moldova, 2008, No.165-166, art.605), with subsequent amendments and additions to the, the Government

ESTABLISHES:

1. The approval of the Regulations regarding standard procedures and general requirements for private partner selection, according to the Annexe.

2. Local and central government shall ensure, at the initiation of public-private partnership projects, the implementation of the provisions of the Regulations regarding standard procedures and general requirements for private partner selection.

PRIME-MINISTER

Vladimir FILAT

Countersigned by:

Deputy Prime Minister,

Minister of Economy

Minister of Finance

Minister of Justice

Valeriu Lazăr

Veaceslav Negruță

Oleg Efrim

Approved by
Government Decision
No. ____ of _____ 2012

Regulations regarding standard procedures and
general requirements for private partner selection

Chapter I
GENERAL PROVISIONS

The Regulations regarding standard procedures and general requirements for private partner selection (hereinafter - Regulations) includes methodological aspects regarding the achievement of public-private partnerships, as well as standard documentation for application, in accordance with good practices regarding standard procedures on initiation and achievement of public-private partnerships, their monitoring and termination.

1. The current Regulations shall be applied to public-private partnership projects started by central government and local government and aim at ensuring efficient use of the public heritage, by proper implementation of procedures for awarding public-private partnership contracts.

2. Private partner selection shall be carried out in accordance with the provisions of the

Law No. 179-XVI of 10.07.2008 on public-private partnership, of these Regulations and other normative acts.

3. Private partner selection will be carried out in compliance with the following principles:

a) the equality of treatment, impartiality and non-discrimination against bidders, including foreign natural or legal persons, who have expressed their intention to participate in the competition;

b) transparency in initiation, operation and final analysis of the competition;

c) ensuring for all economic operators of the possibility to examine objects suggested for public-private partnership and to make acquaintance with the specification.

4. For the purposes of these Regulations, the following terms mean:

informative notice - formal document issued by the public partner in order to start the procedure for achieving public-private partnership project, in accordance with the provisions of these regulations on public-private partnership contracts;

informative notice to initiate the competition with prequalification - formal document issued by the public partner for the initiation of the competition for private partner selection with prequalification, in accordance with the provisions of these Regulations on public-private partnership;

informative notice on the competitive dialogue - formal document issued by the public partner in order to start the procedure of competitive dialogue within the selection of the private partner;

confidentiality – keeping secret the information from the project documents able to facilitate one or more participants in the competition for the award of the contract and subsequently its negotiation;

file of public-private partnership project - the set of documents related to the public-private partnership project in the initiation phase and throughout the project implementation;

object of the public-private partnership - property owned by the State or administrative territorial unit, including the Gagauz autonomous territorial unit, public activities and services of national and local interest, which are proposed for the public-private partnership;

objectives of the public-private partnership projects – general and specific tasks to be carried out within the public-private partnerships;

public partner - public law legal person or association of this persons that establishes a public-private partnership relationship;

private partner- economic operator with whom the contract of public-private partnership has been signed;

selection competition of the private partner- one-stage procedure, during which the Commission shall select the private partner in accordance with the requirements and conditions specified in the informative notice;

private partner selection competition with prequalification - procedure carried out in two stages, which on the first stage of prequalification, the preselection of bidders shall be carried out on the basis of qualification and selection criteria indicated in the informative notice;

feasibility study- analysis of the viability of a public-private partnership project that includes the main features of the object of public-private partnership, on the basis of a technical, economic and financial analysis of the planned investment;

participant in the prequalification - any economic operator who has submitted an

offer for the first stage of a competition procedure with prequalification or competitive dialogue;

awarding procedure - steps to be followed by the public Partner and the bidders for the agreement of parties regarding the involvement in the contract of public-private partnership to be considered valid;

financial bid- bidding document that includes information on the price, tariff, other financial and commercial terms appropriate to meet the requirements laid down in the procurement documentation;

technical bid- bidding document drawn up on the basis of the requirements set out in the bid book or, where appropriate, in the descriptive documentation established by the public Partner;

days - calendar days, unless when stated that they are working days;

bid at prequalification - documents by which a participant in prequalification demonstrates his personal situation, suitability to pursue the professional activity, the economic and financial situation, technical and professional capacity, in order to obtain the invitation of participation for the subsequent submission of the bid;

standard documentation- documentation containing all the information relating to the object of the public-private partnership contract and its award procedure, including the specification which gives details on the technical conditions for goods/services/works that meet the needs of the public partner in relation to the object of the public-private partnership contract to be concluded.

prequalification criteria– criteria established in the prequalification documentation on the basis of which bidders' qualification and their ranking is carried out according to the technical, financial and organizational potential of each of them;

competitive dialogue- award procedure of a public-private partnership contract that is applied to particular complexity contracts, organized into two distinct stages: in the first stage, the qualification procedure is carried out and an unlimited number of interested economic operators participate, that submit bids. At this stage, it is collected the information necessary for compiling the solution for the public partner and the proper dialogue runs itself with the skilled economic operators. The second stage involves the submission of final bids and price assessment;

standard prequalification documentation - written documentation containing all information related to the object of the public-private partnership contract and to the manner of the process of competitive dialogue progress, including instructions for bidders, contract terms and descriptive documentation;

final standard documentation - final documentation produced as a result of dialogue with admitted bidders, containing all information related to the object of the public-private partnership contract, consisting of the specification and the standard contract terms set out in the process of dialogue, on the basis of which it the final final bid is to be submitted;

specification– written documentation, obtained as a result of dialogue with admitted bidders, detailing the technical conditions for goods/services/works that meet the needs of the public Partner in relation to the object of the contract to be awarded.

bid- legal act through which the economic operator manifests his desire to legally engage in a public-private partnership contract;

preliminary bid– document by which the economic operator demonstrates at the first stage of the procedure that he/she understands the context in which the object of the contract is included resulting from the conduct of the dialogue procedure and also offers

preliminary (general) solutions that meet the needs and constraints of the contracting authority, as they were put through the standard prequalification documentation;

final bid– legal act through which the economic operator involved in the competitive dialogue procedure or competition with prequalification admitted in the first phase of the procedure of the competition with prequalification or competitive dialogue manifests the will to legally engage in a public-private partnership contract; the final bid includes technical and financial bid and the it is lodged in the second stage of the competition with prequalification or competitive dialogue, under the conditions described in the award documentation;

economic operator- natural person or private law legal person or Association of natural persons and/or legal entities, formed in accordance with the legal provisions.

Chapter II

PRIVATE PARTNER SELECTION COMMISSION

5. For carrying out the procedure for private partner selection, the public partner creates the private partner selection Commission(hereinafter-the Commission) for each item proposed as an object of public-private partnership.

6. The Commission will be composed of an odd number of natural persons, not less than 5, which must include at least one specialist in economics, a specialist in jurisprudence, a representative of the Agency for Public Property and a specialist in the field in which the public-private partnership is initiated. The Commission is headed by a President, appointed by the public partner.

7. In case of necessity, for specific problems, in the activity of the Commission can be involved other experts and specialists as well. Involved external experts do not have the right to vote within the Commission, but are required to draw up a report on the technical, financial and legal aspects upon which they expose their point of view. The report is part of the public-private partnership activity file.

8. For the public-private partnership projects initiated at the local level, the decision on the establishment of the Commission and the appointment of its President shall be adopted as necessary, by the local councils, District councils or the People's Assembly of Gagauzia. Where appropriate, within the Commission may be included the representatives of the territorial offices of the State Chancellery, of the territorial tax inspectorates, territorial cadastral offices and independent experts.

9. Members of the Commission, as well as other involved experts, have the obligation to maintain confidentiality of all the information and content of the documents made available by the private partner which constitutes a trade secret under law.

10. The Commission and the other co-opted experts are required to sign at their own risk, before taking over the specific tasks within the assessment process, a statement of confidentiality and impartiality and acknowledging that they are not in a situation that involves a conflict of interest.

11. In the case in which one of the members appointed by the Commission or one of the co-opted experts states that he/she is in a situation of incompatibility, then he/she is obliged to inform the public Partner and to immediately request his/her replacement from the Commission by another person. The public Partner is obliged to check the reported and, where appropriate, to undertake the measures necessary to avoid/fix any issues that may trigger a conflict of interest.

12. The Commission shall carry out the following functions:

- 1) to define the criteria for private partner selection and verify their compliance;
 - 2) to approve informative releases on the public competition progress for the private partner selection and, if appropriate, notices regarding their removal;
 - 3) to decide the date of informative notice publication at each stage of the competition progress;
 - 4) to establish the amount of participation fee, advance(guarantee of participation in the competition) and bank guarantee (execution guarantee of the project);
 - 5) to receive requests for participation in the competition;
 - 6) to provide, as appropriate, for the participants in the competition access for prior examination of the object proposed for public-private partnership and Standard Documentation, offers the necessary explanations;
 - 7) to provide to participants in the competition the competition documentation and explain the completing procedure;
 - 8) to receive the bids submitted by the bidders in the mandatory state language and in another language, if appropriate, and to verify the integrity and packages' content within the public meeting;
 - 9) to ensure the maintenance of bids in secure safe;
 - 10) to examine and evaluate the bids;
 - 11) to initiate and carry out the procedure for competitive dialogue;
 - 12) to conduct the public competition, to nominate the winner of the competition and inform in writing the participants in the competition about the results;
 - 13) to present the report to the public partner regarding final competition results;
 - 14) to sent for publication in the 'Monitorul Oficial al Republicii Moldova' and on the website of the Agency for Public Property the information about the outcome of the procedure for private partner selection.
 - 15) to open bid and, if appropriate, other documents accompanying the bid;
 - 16) to verify the fulfillment of criteria of qualification/assessment by the bidders, established by the documentation for qualification/award;
 - 17) to carry out the preselection/selection of bidders;
 - 18) to carry out the dialogue with the economic operators, in case of the competitive dialogue procedure;
 - 19) to verify the compliance of the technical bids with the minimum requirements of the specification or standard documentation;
 - 20) to check the financial bids submitted by the bidders;
 - 21) to establish the admissible bids;
 - 22) to apply the award criteria;
 - 23) to establish the winning bid;
13. Commission meetings are deliberative, if at least two thirds of the members of the Commission participate at them.
14. Commission decisions shall be adopted by a simple majority of votes of the total number of members appointed. Each Member is entitled to one vote.
15. May not be members of the Commission, the participants in the competition, the persons who are part of the management of the legal entity who submitted the request for participation.
16. The activities and decisions of each Commission meeting shall be recorded in the report, prepared by the Secretary of the Commission within 5 days from the time of the meeting.

17. The minutes shall be signed by all members of the Commission present at the meeting. When one of the members of the Commission refuses to sign the minutes, he/she is obliged to present own views in writing, preparing for this purpose a dissenting opinion, signed, which is attached to the minutes of the given meeting.

Chapter III

PROCEDURES PRIOR TO PUBLIC-PRIVATE PARTNERSHIP CONTRACT AWARD

Section 1

Identification and approval of the objects of public-private partnership projects

18. List of State property and the list of activities and services of national public interest, as well as the objectives of public-private partnership projects is drawn up at the proposals of the central government and approved by the Government in the established manner.
19. List of territorial-administrative units and the local public interest services and the objectives of the public-private partnership projects is established by the executive bodies of the territorial-administrative units, and approved by the respective Councils.
20. An object can be proposed to the public-private partnership, only if it is included in the list approved by the Government or deliberative public authority of the administrative-territorial unit, as well as of the Gagauz autonomous territorial unit.

Section 2

Feasibility study

21. In order to establish a report on public -private partnership, based on goods, activities and services, as well as approved objectives, the public partner shall ensure the establishment of a feasibility study. The feasibility study is compiled separately for each public-private partnership project. The framework content of the feasibility study is submitted in accordance with Annex 11 to these Regulations.

22. The public partner may appoint an expert group or an individual, for the preparation of the feasibility study, but is obliged to undertake all necessary measures to ensure that the elaboration of the feasibility study to be conducted at an appropriate level and with the reflection of all the tasks and conditions required.

23. The feasibility study should include an analysis enabling the definition and quantification in economic and financial terms of project risks, taking into account also the identified variants of risk sharing between partners. To this end, the public partner, can use, as a model, the preliminary framework for distribution of project risks, developed and approved by the Ministry of Economy;

24. The feasibility study should focus on the analysis of relevant elements that include: general aspects, technical feasibility, economic and financial feasibility, environmental aspects, social aspects and institutional aspects of the project. By the project is meant all works/constructions to be performed and/or services to be rendered during the contract progress of public-private partnership.

25. The feasibility study will contain the following elements:

- 1) general data, the purpose and objectives of the study, data regarding public partner, where appropriate, details of the natural /legal person that prepares the feasibility study.
 - 2) summary of the existing situation, with the elucidation of the major shortcomings of the current situation that results in the need of investment, including, where appropriate, tables, graphic maps, drawn sketches, photographs, etc., making the current situation and the need for investment explicit;
 - 3) the opportunity to promote the PPPproject;
 - 4) inclusion of the objective within the general, sectoral or regional short-and medium-term investment policies;
 - 5) legislative acts, international agreements governing the field;
 - 6) the form and method of implementation of PPP project;
 - 7) techno-economic scenarios for achieving the objectives of the public-private partnership project;
 - 8) the major techno-economic indicators of investment (the total investment amount; investment staggering; investment identification and defining the objectives, including the specification of the reference period);
 - 9) funding sources of the investment (equity; bank loans; funds from the budget of the State/local budget; external credits guaranteed or contracted by the State; foreign grant funds; other legally constituted sources);
 - 10) financial analysis, including the calculation of indicators of financial performance: internal rate of return and the cost-benefit ratio;
 - 11) economic analysis, including the calculation of economic performance indicators: implementation graphs of the project using GANTT, PERT, SWOT model, etc.;
 - 12) estimates of employment by the achievement of public-private partnership project;
 - 13) data on the place on which the object is to be settled, the legal status of the territory, the way/form of contract by which is to be transmitted to the private partner; the estimated area of land.
 - 14) concession term justification or other forms of contract for public-private partnership;
 - 15) identification and analysis of the risk-sharing options in the framework of risks after their management capacity;
 - 16) environmental impact mitigation solutions;
 - 17) delivery conditions of the object or service after completion of the contract;
 - 18) other elements necessary for demonstrating the safety and viability of the project;
 - 19) conclusions.
26. Feasibility study for projects of national interest, as well as of local interest is forwarded by the public partner for endorsement of the Agency for Public Property.
27. When approving the feasibility studies the Agency for Public Property will pursue that the structural feasibility study presented to comply with the requirements laid down in point 25.
28. The Agency for Public Property will analyze whether the results of the feasibility study justify the the need and opportunity for initiation of the public-private partnership project and demonstrates that:
- a) the project is feasible and commercially achievable;
 - b) the project fulfills the requirements and policies of the public partner;
 - c) various alternatives of project achievement have been taken into account;
 - d) the form of project achievement foreseen by the award of a public-private partnership contract is more advantageous as compared to the other forms;

e) the project is advantageous in financial terms.

29. In the case of public-private partnership projects initiated by the central government, for the achievement of which it is required the participation of the state budget, the feasibility study is submitted to the Ministry of Finance as well for the examination of the project sustainability.

30. For national public-private partnership projects, where the feasibility study demonstrates its viability, the appointed public partner shall draw up and submit for approval to the Government, the general requirements concerning the private partner selection, the specific objectives, the award procedure of the private partner selection competition, as well as the conditions of public-private partnership.

31. For local public-private partnership projects, where the drawn up feasibility study demonstrates its viability, the appointed public partner shall draw up and submit for approval to the local Council, general requirements regarding the private partner selection, the specific objectives, the award procedure of the selection competition of the private partner and the conditions of public-private partnership.

32. After the approval of general requirements concerning the selection of the private partner, as well as the conditions of public-private partnership, the public partner establishes the Commission and prepares the documentation required for the organization of the private partner selection competition, including:

a) informative notice;

b) specification for implementation of the public-private partnership project (description of the object of public-private partnership, conditions of execution of the public-private partnership project);

c) draft contract (the structure of the draft contract is laid down in the Annex 2 to these Regulations);

33. In the preparation of the documentation the public partner is entitled to attract individuals or legal entities for assistance in formulating, assessing and competition documents expertise.

34. Award procedure is chosen depending on the characteristics of each project and its complexity, by applying one of the following forms:

1) private partner selection competition (hereinafter – Competition);

2) private partner selection competition with prequalification (hereinafter – competition with prequalification);

3) private partner selection competition by applying the competitive dialogue (hereinafter – Competition by applying the competitive dialogue).

Section 3

Forms of public-private partnership contracts

35. The public-private partnership contract is achieved by one of the following forms:

a) entrepreneurial contract/ services contract;

b) fiduciary contract;

c) lease/rental agreement;

d) concession contract;

e) commercial company contract or civil company contract.

36. Implementation of public-private partnership through entrepreneurial/services contract aims to provide public services to a communal household, the execution of works for renovation for a fee, services for both infrastructure elements and other property as the

object of public-private partnership, record keeping of resource consumption, introducing bills for consumers.

37. Achievement of public-private partnership through fiduciary contract aims to ensure the proper management of public property based on the performance criteria laid down in the contract. In this case, the public partner hands over the management risks and risks related to ensure the functioning of the object of public-private partnership to the private partner, if the contract provides otherwise.

38. Implementation of public-private partnership through the lease/rental contract has as object the transmission in the temporary possession and use of public property. The private partner is responsible for the use of the object at the destination and for the collection of payments for the work performed and services provided. The contract price shall be determined by the parties and shall not be less than the minimum amount of rent fixed by the annual law of the State budget.

39. Implementation of public-private partnership through the concession contract shall take place in accordance with the law on concessions.

40. Public-private partnership can be achieved also by the association of the public partner and the private partner, either on the basis of a civil company contract, without creating any legal persons, or by the establishment of a commercial company (company with limited liability or joint-stock company) based on mixed capital (public-private).

41. Public-private partnership can be achieved by other forms of contract which are not prohibited by law. Contracts referred to in this article shall apply to the provisions of the Civil Code.

Section 4 **Ways of carrying out public-private partnership projects**

42. Depending on the involvement level of the private partner, the following ways of carrying out public-private partnership are defined:

1) design-construction-operation, whereby the construction and operation of public-private partnership object are transferred to the private partner for not more than 50 years. The public-private partnership project can be fully funded by the private partner. On the expiry of the contract signed with the public partner, the object of public-private partnership shall be transferred free of charge to the public partner in good condition, functional and free of any charge or obligation;

2) construction-operation-renewal, by which the private partner assumes the construction financing of the public-private partnership object and all of its maintenance costs for a period of not more than 50 years. The private partner is allowed charging, in accordance with the legislation in force, the appropriate fees for the use of public property during a set period. On the expiry of the contract, the object of the public-private partnership shall be transferred free of charge to the public partner in good condition, functional and free of any charge or obligation;

3) construction-operation-transfer, by which the private partner assumes the construction, financing, operation and maintenance of a public good. The investor is allowed to charge fees of usage to recover the investment and to cover the costs of maintenance, as well as to get a reasonable profit. Upon the completion of the contract, the public good is transferred free of charge to the public authority in good condition and free of any charge or obligation;

4) construction-transfer-operation, by which the private partner assumes the construction of an asset that is transferred to ownership to the public partner immediately

after completing the construction, and the public partner, in his turn, shall transmit it to the private partner to use it;

5) tenancy-development-operation, by which the private partner gets into temporary use or in temporary possession and use of a public good, by obliging oneself to pay its price by installments during a period which shall not exceed 50 years. If the contract does not provide otherwise, the public partner acquires the right to earn income from the services provided by the private partner, and at the completion of the contract, the public property is transferred to the public authority in good condition and free of any charge or obligation;

6) rehabilitation-operation-transfer, by which public property is transferred to the private partner which has the obligation to rehabilitate, operate and maintain the public property for a period which cannot exceed 50 years. On the expiry of the contract, the public good shall be transferred free of charge to the public partner in good condition, functional and free of any charge or obligation.

43. Public-private partnership can be achieved by other means which are not prohibited by law.

Chapter IV

GENERAL REQUIREMENTS ON IMPLEMENTING THE PROCEDURE OF PRIVATE PARTNER SELECTION COMPETITION

Section 1

Transparency

44. Public partner will carry out the private partner selection competition(hereinafter Competition), in case when the project is of a reduced complexity and the public partner may establish the legal/technical structure of the project. The competition is conducted in a single phase, at the completion of which the public partner will award the public-private partnership contract.

45. Public partner will ensure the publication in the 'Monitorul Oficial al Republicii Moldova' of the informative release regarding the initiation of the private partner selection competition, in accordance with the form and content established in the standard documentation for the achievement of the public-private partnership. The informative release is valid for 60 days from the moment of its publication in the 'Monitorul Oficial al Republicii Moldova'.

46. The public partner has the right, in order to ensure maximum transparency, to place the informative notice on the start of the private partner selection and the other mass media, local, national or international, or the Internet, but only after its publication in the 'Monitorul Oficial al Republicii Moldova' and on the website of the Agency for Public Property, having the obligation to fully respect the contents and form of the published notice.

47. Following the publication of the informative notice regarding the start of the private partner selection competition, the Commission will to carry out the procedure for contract award for public-private partnership in accordance with the provisions of the Regulations.

48. The informative notice will contain:

- 1) the intent of establishing a relation of public-private partnership, as well as its objective;
- 2) the name of the public partner;

- 3) object description and objective of public-private partnership, the indication of the geographical area of its location;
- 4) duration of the public-private partnership;
- 5) information on the procedures of private partner selection;
- 6) information on obtaining the competition documentation;
- 7) address and the time-limit for submission of bids;
- 8) requirements to bidders and the data to be included in the bid;
- 9) information on the place and date of the examination of bids;
- 10) the period within which bidders are informed about the results of the contest;
- 11) risk -sharing arrangements;
- 12) performance indicators and assessment criteria.

49. The decision of the public partner and depending on the object of the public-private partnership, in the informative notice can be also included other data than those listed above.

Section 2

Access to awarding procedure

50. In the period between the date of publication of the informative release on the initiation of the private partner selection competition and the closing date for the submission of bids, the public partner has an obligation to ensure that any economic operator is able to get full information about conditions of participation in the competition.

51. Any economic operator shall be entitled to submit the bid to participate in the competition, except in cases of conflict of interest envisioned by the law on conflict of interest.

52. Many economic operators have the right to associate for the purpose of submitting a common bid, without being obliged to officially legalize the association. But the commitment concerning the partnership must be presented in written form at the time of the offer submission.

53. The public partner shall have the right to request that the partnership to be certified only if the joint bid, lodged by the prequalified bidder, is declared winner and only if such a measure is a necessary condition for the proper performance of the contract to be awarded.

54. Without reducing the liability as regards the way of future public-private partnership contract execution, the bidder shall have the right to include in the technical bid the opportunity to subcontract a part of it.

55. At the request of the public partner, the bidder is obliged to specify the part/parts of the contract he/she intends to subcontract and to present data about the proposed subcontractors.

56. An economic operator does not have the right under the same procedure to submit two or more individual bids and/or common, under the penalty of exclusion from the competition of all bids.

Section 3

Clarifications to the standard documentation

57. Instructions to bidders and other necessary forms included in the standard documentation are set out in the Annex 3 to these Regulations.

58. Any interested economic operator shall be entitled to ask the public partner for clarification on the manner of the competition performance and/or documentation to be presented.

59. The public partner is obliged to respond clearly, promptly and fully as soon as possible, any clarification requested by 15 days before the date of expiry of the deadline for the submission of bids in the extent to which the clarifications are requested in a timely manner, the response of the public partner to these requests must be submitted no later than 7 days before the deadline fixed for the submission of bids.

60. The public partner is obliged to transmit the answers - accompanied by questions regarded- to all the economic operators who have obtained, under these Regulations, competition documents taking measures so as not to reveal the identity of the one who requested clarifications.

61. In case when the economic operator has not submitted a request for clarification in a timely manner, the latter has, however, the obligation to respond to the request for clarification to the extent that the period necessary for the creation and transmission of the response makes possible its receipt by the economic operator before the deadline for submission of bids.

Section 4 Competition participation fee

62. The fee for participation in the competition is the sum of money that the economic operator is to pay in order to participate in the procedure for the award of the public-private partnership contract.

63. Competition participation fee shall be fixed by the Commission and it is indicated in the informative release.

64. The competition participation fee shall be paid at the time of initiating the procedure of the competition only once by the economic operator, before the closing date for submission of bids.

65. Competition participation fee shall not be refunded.

Section 5 Guarantee for the bid

66. Bid guarantee shall be established by the Bidder in order to protect the public partner against a possible risk of inappropriate behavior of bidder throughout the period of the bid carried out until the conclusion of the public-private partnership contract, and may be in the form of financial means switched on the account of the public partner or bank guarantee

67. Public partner is obliged to establish in the award documentation:

a) requirements to the issuer of the guarantee, the form and other basic conditions of guarantee for bid, or

b) amount of the guarantee for the bid, which will not exceed 20 percent of the value of the bid submitted.

68. Period of validity of the guarantee for the bid will be at least equal to the period of validity of the bid.

69. Letters of banking guarantee will be issued by a bank in the Republic of Moldova, where appropriate, by a bank abroad, preferably with a correspondent in the Republic of Moldova. Public partner is not entitled to require the release of the guarantee for the bid by a certain bank, nominated expressly.

70. Before submitting the bid, the economic operator may request the public partner to confirm the acceptability of guarantee issuer for the bid. Public partner will respond promptly to this request, however such confirmation may not prevent public partner to dismiss the guarantee for bid, if the issuer has become insolvent or has lost credibility.

71. Bid guarantee is presented simultaneously with the bid.

72. Public partner is entitled to transfer the amount of the guarantee for the bid in his/her budget, the bidder thus losing the amount established when:

a) the bidder withdraws or modify the bid in its period of validity;

b) the bidder whose bid is established as winning, it shall not represent the bank guarantee of proper performance;

c) his/her bid being set winning, he/she refuses to sign the public-private partnership contract during the period of validity of the bid.

73. The bid guarantee lodged by the bidder whose bid was determined as the winner, is returned to the public partner at the submission of the bank guarantee of proper performance of the contract.

74. Bid guarantee, consisting of the bidders whose bid has not been set as winning, shall be returned to the public partner after the signing of the public-private partnership contract with the bidder whose bid was nominated as winning, but not later than 5 working days from the date of expiry of the period of validity of the bid.

Section 6

Performance bond

75. The performance bond shall be set by the private partner in order to assure the public partner on the qualitative and quantitative fulfillment during the contract performance period.

76. Public partner is obliged to establish the following conditions in the award documentation:

a) requirements towards the issuer, the form and other core conditions of the guarantee of proper contract performance, required for execution of the contract;

b) the quantum of the bank guarantee, which shall not exceed 25 per cent of the investment value. For works whose term of achievement is more than a year, the quantum of the performance bond shall not exceed 25 per cent of the sum of the investments to be carried out during that year.

77. The public partner has the right to use the performance bond, at any time during the execution of the contract, within the limits of the damage created, in the case when the private partner fails to fulfill the obligations entered into by contract. Prior to the issuance of a claim over the performance bond, the public partner is obliged to notify the claim to the private partner, specifying the obligations that have not been fulfilled.

Section 7

Submission of bids

78. The offer is binding, in terms of content, throughout the period of validity prescribed by the public partner and must be signed, on his own responsibility, by the bidder, or by a person legally empowered by the bidder.

79. Submission of a bid represents the expression of the bidder's will to sign the contract of public-private partnership with the public partner and to perform the contract

object in accordance with the requirements of the awarding documentation that has been sent.

80. The bidder is obliged to submit the offer at the address and until the closing date for submission, as laid down in the informative release and assumes the risks of transmission of the offer, including force majeure. The offer, written and signed, shall be submitted in a sealed envelope. The public partner issues to the economic operator, necessarily, a receipt showing the date and time of receipt of the offer.

81. The offer that is submitted to a different address than that specified or after expiry of the deadline for submission is rejected and returns unopened.

82. The contents of offers shall remain confidential until the date fixed for their opening, the public partner preceding to get acquainted with the contents of these offers only after this date.

83. The bidder is obliged to keep the offer valid throughout the period of validity specified in the bidding documentation. The period of validity shall begin with the date of the bid opening and end with the date of contract signing by the parties involved.

84. The public partner has the right to require bidders to extend the period of validity of the offer, prior to the expiry of this period.

85. The bidder is obliged to communicate to the public partner whether or not he/she agrees to extend the period of validity of the offer. In this case, the bidder shall have the right:

a) to reject the proposal;

b) to accept the proposal, extending the period of validity of his bid guarantee or offering new guarantees for the offer on the term of validity of the offer extended.

86. In the case when the bidder has not extended the term of validity of the guarantee for the offer or has not granted a further guarantee for the offer, it shall be deemed to have refused to extend the term of validity of the offer.

87. The bidder who does not agree to extend the period of validity of the offer shall be deemed to withdraw the offer, without that this fact might result in loss of guarantee for bid.

88. The bidder shall have the right to modify or withdraw the offer prior to the deadline for submission of bids, without losing the right to withdraw the guarantee for the offer. Such a change or the notice on the withdrawal of the offer is valid, if it has been received by the public partner prior to the expiry of the deadline for the submission of bids, laid down in the awarding documentation.

Section 8

Bid opening

89. The Commission is obliged to open the bids within 5 days of the time limit for submission of bids specified in the informative release.

90. All bidders are entitled to participate in the opening of bids.

91. Bids shall be opened in the order of their submission.

92. The opening session of bids is finished by a report, signed by the members of the Commission, in which formal aspects are reported mentioned at the opening of bids, (bidders' name, changes and withdrawals of bids, the way of carrying out the requirements relating to guarantee for the bid, etc.).

93. The Commission has an obligation to send a copy of the minutes of bid opening to all bidders, regardless of whether or not they were present at the meeting.

94. Any decision concerning the assessment of the bids shall be adopted by the Commission in the context of the meetings subsequent to bid opening session, these meetings taking place without the participation of bidders or their representatives.

Section 9 Bid Evaluation

95. The Competition Commission is obliged to examine and check each offer both in terms of the proposed technical elements and in terms of financial aspects involved.

96. Technical bid must comply with the minimum requirements laid down in the specifications included in the standard documentation.

97. The Commission is required to identify which are the clarifications and formal additions or confirmation, necessary for the evaluation of each bid, and the time allowed for transmission of the clarification. Notification transmitted to that effect by the bidder must be clear, precise and to define explicitly and in sufficient detail what is requested by the Commission. The deadline for bidders to reply to the requests for clarification must be correlated with the degree of complexity of the questions and, as a general rule, not be less than 2 working days.

98. In the case when the bidder fails to deliver within the period specified by the Commission the requested clarifications/responses or if the explanations submitted by the bidder shall not be conclusive, the bid will be rejected.

99. In the case when the bidder changes by the answers that are submitted by the content of the technical bid, the bid will be rejected. Changes to the technical bid are accepted in so far as they:

- a) may be placed in the category of form gaps or arithmetic errors; or
- b) are corrections of certain minor technical deviances;

100. In the case when the bidder changes by the answers represented by the content of the financial offer, the bid will be rejected, with the exception of the situation referred to in paragraph 104.

101. The Commission has the right to correct arithmetic errors or form defects only with the agreement of the bidder. In case when the bidder does not support the correction of these errors/irregularities, his/her bid will be removed.

102. Arithmetic errors shall be corrected as follows:

- a) if there is a discrepancy between the unit price and the total price, it must be taken into account the unit price, and total price will be corrected accordingly;
- b) if there is a discrepancy between the letters and figures, it must be taken into account the value expressed in letters, and the value expressed in figures will be duly corrected.

103. The irregularities of form represent those errors or omissions within a document whose correction/completion is unequivocally supported by the meaning and contents of other originally existing information in other documents submitted by the bidder or whose correction/completion is used as clarification and/or confirmation, not likely to produce an unfair advantage in comparison with the other participants in the award procedure.

104. The Commission shall reject bids in the following cases:

- a) it was found that they do not comply with the requirements of the standard documentation regarding the amount and other terms of formation, and cannot be executed;

b) the bid is priced unusually low for what is to be provided/rendered/executed, and the bidder failed to demonstrate the access to a special technology or more favourable market conditions to support such a price;

c) contains proposals to amend the contract clauses laid down by the public partner in the standard documentation, which are obviously disadvantageous for the latter, and the bidder, although informed on this situation, does not accept the waiver to the mentioned clauses.

105. The winning bid is determined only of those admitted and only on the basis of the evaluation criteria listed in the informative release and standard documentation. 106. Evaluation criteria may refer, as appropriate, to:

- 1) the level of charges for use payable by the final beneficiaries;
- 2) the fee level;
- 3) degree of risk taking by the private partner;
- 4) submitted development and financing plans;
- 5) quality, technical and functional, aesthetic level of technical solutions proposed;
- 6) ensure the protection of the environment;
- 7) the way of handling certain social issues;
- 8) the deadlines of investment implementation and their recovery rate;
- 9) delivery period or period of execution;
- 10) cost/effectiveness ratio;
- 11) post-sales services and technical assistance;
- 12) project duration;
- 13) other elements identified as significant for the evaluation of bids.

107. To establish the criteria for the evaluation of public-private partnership contract, the public partner is not entitled to use such criteria that:

a) do not have a direct connection with the nature and object of the public-private partnership contract;

b) do not reflect a real and obvious advantage that the public partner can obtain, in his name or in the name of the final beneficiaries.

108. The share settled for each criterion must not lead to distortions of the outcome of the procedure implementation for the award of the public-private partnership contract. For each criterion, the public partner has the obligation to establish a weighting which shall accurately reflect the value amount of the financial advantages offered by the bidders or the technical/functional importance of proposed solutions.

109. For the purposes described above, the public partner is obliged to specify in the standard documentation the evaluation criteria of the bid and the evaluation factors within it (if the criterion used is the economically most advantageous offer), with their relative shares or algorithm of calculation, as well as the specific scoring methodology of benefits that will result from the technical and financial bids submitted by the bidders. Assessment factors with their relative shares, the algorithm of calculation, as well as the scoring methodology of the advantages should be connected with the specifics of the contract and, after having been established, they cannot be changed from the moment when the awarding documentation has been approved by the public partner.

110. In order to achieve the order of the bids admitted, for each bid a score is awarded as a result of the implementation of the calculation algorithm laid down in the standard documentation.

111. In the descending order of the granted score, the Commission shall draw up the rankings on the basis of which the winning bid is established.

112. After having completed the evaluation of bids, the Commission is required to draw up the report on the evaluation of received bids by which this public-private partnership contract has been awarded and the report on the final decision on appointing the winning bidder or the rejection of bids.

Section 10

The designation of the winning bidder, public-private partnership contract conclusion and communication of final result

113. Public partner is obliged to notify in writing all bidders about the outcome of the competition not later than 3 working days after signing the minutes by the members of the Commission.

114. The Commission shall publish in the 'Monitorul Oficial al Republicii Moldova' an informative release on the designation of the winner of the competition and the competition totals within 5 calendar days from the date the contract is signed.

115. After the designation of the best bid, the Commission shall, not more than 30 days from the date of that decision, draw up a contract draft which satisfies the data referred to in Section 11 of this chapter and shall forward it to the bidder designated as the winner.

116. Draft contract drawn up shall be negotiated not later than 30 calendar days from the date of receipt by the bidder designated as the winner. If, on the expiry of the deadline set, the bidder designated as winner refuses to sign the contract, the Commission shall be entitled to designate as the winner the bidder ranked on the following position according to the evaluation results.

117. The draft of the contract for public-private partnership in the negotiated form is to be signed by the public partner.

118. Public partner is obliged to conclude the public-private partnership contract with the bidder whose bid was established as the winner by the Commission. The value of investments disclosed in the winning offer is firm, and it can not be modified.

119. The bidder asked by the public partner to conclude the contract of public-private partnership is required to set up a performance bond. Amount of the performance bond shall be established by the Commission and shall be indicated in the standard documentation. The performance bond is furnished by a letter of bank guarantee.

Section 11

The clauses of the public-private partnership contract

120. For all forms of public-private partnership performance, the contract concluded between the public partner and the private partner should contain at least the clauses relating to:

- 1) data on the Contracting Parties;
- 2) the rights and obligations of the parties:
 - a) private partner obligation on building and/or reconstruction of the public-private partnership object;
 - b) private partner obligation for carrying out the repair of public-private partnership object in the case when this fact has been included in the requirements list of the public

partner or it was assumed by the private partner at the stage of selection competition procedure of the private partner;

c) obligation of private partner on keeping, in accordance with the legislation, facilities for some categories of the population;

d) obligation of public partner regarding co-financing public-private partnership object;

3) description (techno-economic characteristic) of the public-private partnership object;

4) the term of the contract and stages of implementation of public-private partnership, investments of private partner and the public partner, where appropriate.

5) the term for the use of the public-private partnership object, where appropriate;

6) rules concerning the manner of use of the land owned by the public partner;

7) data on the volume of goods to be produced, the work to be performed, the services to be provided, as well as data on their quality, where appropriate;

8) the amount of payment for the use of the public-private partnership object, the form, the term and procedure for payment;

9) clauses on the risk-sharing;

10) the means and the procedure for repayment of public-private partnership object at the time of expiry of the public-private partnership term, where appropriate;

11) the injury repair/ compensation clause; liability for failure to perform the obligations in the case of termination, cancellation and/or revocation of the contract, if applicable;

12) performance criteria in the case of fiduciary administration contract.

121. General or specific clauses of the contract for public-private partnership must not conflict with the essential requirements of the specifications and any commitments assumed by the private partner in the framework of the bid, irrespective of the way of risk distribution. The way of cost recovery by the private partner must be such as to cause him to make all the necessary diligence to reduce the costs.

122. The public-private partnership contract should contain clauses which explicitly lay down the manner of risk distribution throughout its entire period.

123. Private partner does not have the right, during performance of the contract, to accept or require amendments to clauses which would have the effect of a reduction in the responsibilities of the latter to such an extent that most of the risks to be associate public redistribution.

124. Public partner must specify in the contract the performance and quality level of the activities that private partner will carry out, and the way in which the private partner must act in any emergency situations, establishing the relevant measurable indicators and on the basis of which it will be verified the compliance with the contractual obligations.

125. The contractual clauses should provide for the right of the public partner to check the implementation of performance requirements and quality of the activities carried out by the private partner, including the right to check the relevant documents relating to these issues.

126. The contractual clauses should provide for, too, the way the private partner is required to submit reports, periodicals to the public partner or at the latter's request, with regard to the way in which certain parameters during the contract are implemented.

127. In the public-private partnership contract it should be specified the procedure whereby, at the start of the project, it is achieved the transfer from public partner to private partner of infrastructure or of any goods to be used in the execution of the contract.

128. The contract shall establish the distinction between goods that are to be returned at the end of the contract and own property, as well as their legal regime.

129. The contract shall also specify the procedure whereby, at the time of completion of the contract, the contract object transfer shall be performed from private partner to public partner.

130. During contract execution period, the private partner has the right to enter into contracts with third parties to ensure recovery and exploitation of assets, activities and services which are the object of the contract.

131. The contract must provide for situations in which it may be terminated.

132. In addition to the provisions expressed above, the contract must include appropriate procedures to deal with nonconformities in the performance of contractual obligations, including the penalties applicable in the event of the detection of such non-compliance, to correct them.

133. The parties will establish, compulsorily, the dispute settlement mechanism which may arise during the contract execution and will indicate the courts entrusted with the settlement of these disputes.

134. Parties may insert in the contract the arbitration clause conferring settlement jurisdiction of disputes arising from performance of the contract the courts of arbitration.

135. Depending on the specifics of the object of public-private partnership, other terms agreed by the parties may be included in contracts.

136. The contract shall be deemed concluded and it enters into force on the date when it is signed by the parties, or on the date set in the contract.

Section 12

Termination of public-private partnership

137. Public-private partnership is terminated upon

- a) expiry of the contract concluded between the public partner and the private partner;
- b) on the basis of the agreement between the public partner and the private partner;
- c) in other cases prescribed by law or contract.

138. In the case of termination of public-private partnership, the private partner is obliged to return the goods free of charge to the public partner, free of any duties.

139. In the event of termination of public-private partnership, the private partner is obliged to ensure the continuity of the services' activity under the conditions stipulated in the contract, until their takeover by the public partner.

140. In case when the private partner perceives the existence of some causes or interferences of events which make it impossible to conduct the business or rendering of the service of public interest, the private partner shall immediately notify the public partner about this event in order to take the measures necessary to ensure the continuity of the activity or service.

Section 13

Cancellation of private partner selection competition

141. Public partner, on own initiative, has the right to cancel the competition procedure conducted for contract awarding for public-private partnership, if this decision will be taken before the date of submission of the communication on the outcome of the procedure implementation in the following cases:

- a) it was not possible to achieve a satisfactory level of competition;
- b) there have been lodged only offers rejected by the Commission, in accordance with the provisions of these Regulations;

c) there have been recorded deviations from the legal provisions affecting the procedure of the competition conducted in concluding the public-private partnership contract;

142. At any stage of the competition, the Commission is entitled to adopt a decision on the completion of the competition without determining the winner with the release of their bid guarantee.

143. After the date of submission of the communication on the outcome of the bidding procedure and after the date of contract conclusion, the cancellation of the competition procedure shall be carried out only by the Court.

144. Public partner is required to communicate in writing to all participants in the competition, not later than 3 working days from the date of cancellation, the cancellation of the decision of awarding procedure and the termination of obligations which the economic operators have created through submission of bids.

Chapter V

IMPLEMENTATION REQUIREMENTS FOR PRIVATE PARTNER SELECTION COMPETITION WITH PREQUALIFICATION

Section 1

Requirements for the initiation of the competition procedure with prequalification

145. Public partner will choose the private partner selection competition with prequalification stage in the case when the project is complex and the public partner wishes to establish criteria for prequalification and subsequently the awarding of the public-private partnership contract.

146. The competition procedure with prequalification is held in two stages:

a) the selection stage of participants to prequalification, by applying the criteria for prequalification;

b) evaluation stage of bids submitted by selected participants in the prequalification, by applying the awarding criteria.

147. Stage of prequalification provided for in paragraph a) of section 154, presumes qualification and ranking of economic operators on the basis of the prequalification criteria set out in the documentation of prequalification, in order to limit the number of participants who will submit a bid in the second stage of the competition with prequalification.

148. The competition with prequalification starts by sending for publication the informative release of participation in the competition with prequalification requiring the economic operators interested in submitting the bids of prequalification and participation in competition. The informative release is valid for 60 days from the day of its publication in the „Monitorul Oficial al Republicii Moldova”.

149. The public partner is required to ensure the publication in the 'Monitorul Oficial al Republicii Moldova' the informative notice to participate in the competition with prequalification in accordance with the form and content established in the standard documentation for prequalification.

150. The public partner has the right, in order to ensure maximum transparency, to place the informative notice by other means of mass media, local, national or international, as appropriate, or the Internet, but only after the publication of this notice in the 'Monitorul

Oficial al Republicii Moldova' and on the website of the Agency for Public Property, having the obligation to fully observe the contents and form of the published notice.

151. The informative notice for prequalification participation, requiring submission of bids to the prequalification, in addition to the information in paragraph 48 of these Regulations, shall indicate the criteria for prequalification and other information to Commission decision.

Section 2

Prequalification criteria

152. Public partner must draw up standard documents of prequalification that will contain the object description of the contract to be awarded, so that the economic operators should have sufficient information to allow him to form a decision on participation in the competition with prequalification.

153. Under the procedure of prequalification of participants to prequalification, the public partner has an obligation to apply objective and non-discriminatory criteria, using for this purpose only criteria for prequalification specified in standard documents for prequalification.

154. Within the framework of standard documents of prequalification, the public partner is obliged to specify the criteria for prequalification under which it will be conducted the selection of participants, referring only to the economic and financial situation and to their technical capacity and/or professional one.

155. The Commission has an obligation to determine the criteria for prequalification, the most suitable ones on the basis of which it will be determined which qualified participants to prequalification will be invited to submit the bids in the second stage of the competition with prequalification.

Section 3

Access to prequalification procedure

156. In the period between the date of publication of the Informative Notice on prequalification participation and submission deadline for prequalification participants, the public partner is required to provide any economic operator the possibility to acquire full information about requirements of participation to the competition that is running.

157. Any economic operator shall be entitled to submit the offer to participate in the competition with prequalification, except in cases of conflict of interest provided for by the Law on conflict of interest.

158. Many economic operators have the right to associate for the purpose of jointly submitting bids, without being obliged to legalise in formal terms the association. But the commitment concerning the association must be submitted in written form at the time of submitting the bid.

159. Public partner shall have the right to request that the partnership should be certified only if the joint bid, lodged by the selected participants in prequalification, is declared the winner and only if such a measure is a necessary condition for the proper execution of the contract to be awarded.

160. Without reducing own liability in regards to the manner of executing the future contract for public-private partnership, the participant selected to prequalification has the right to include in the technical bid the opportunity to subcontract a part of it.

161. If the public partner requires, the participant at prequalification is obliged to specify the part/parts of the contract he/she intends to subcontract, as well as the data concerning the proposed subcontractors.

162. An economic operator does not have the right under the same procedure:

a) to submit two or more individual bids and/or joint, under the penalty of exclusion from the competition of all the bids in question;

b) in the case when the participant in the prequalification has been selected, he/she shall not have the right to associate with other participants in the prequalification selected within that procedure of competition with prequalification, in order to submit the joint bid, and the public partner is not entitled to accept such an offer;

Section 4

Clarifications to the standard prequalification documentation

163. The instructions to bidders at prequalification and other required forms included in the standard prequalification documentation are given in Annex No. 3 to these Regulations.

164. Any interested economic operator shall be entitled to request clarifications from the public partner under the conditions of the Section 3, Chapter IV of these Regulations.

Section 5

Submission, Opening and Evaluation of Bids

165. Submission and opening of bids at prequalification takes place according to the requirements of Section 8 and 9, Chapter IV of these Regulations.

166. The Commission is required to check the compliance with the criteria for prequalification by each participant, as set out in the standard prequalification documents.

167. During the analysis and verification of the documents presented by the bidders, the Commission has the right to ask for clarifications or additions at any time of the documents presented by them to demonstrate the compliance with the criteria for prequalification, as laid down in the standard prequalification documents.

168. The participant in the prequalification is obliged to respond to requests for clarification from the Commission, submitted by the public partner, submitting the necessary documents attesting/confirming the compliance with the criteria for prequalification within the term stipulated in this request

169. The bid will be refused in the following cases:

a) it does not meet the criteria for prequalification set out in the standard prequalification documentation;

b) it did not respond, or not answered conclusively, to requests for clarification of the Commission;

170. After having checked out the compliance with the criteria for prequalification, the Commission is required to select bids on the basis of the prequalification criteria laid down in the standard prequalification documents by applying the qualification Accepted/Rejected.

171. The Commission has an obligation to draw up a report on the stage of prequalification in three days following the decision of prequalification that is submitted to the public partner.

172. The public partner is obliged to inform all participants of the outcome of the first stage of the competition procedure with prequalification, maximum within 3 days.

Section 6

Invitation to participate in the second stage of the competition procedure with prequalification and submission of bids

173. After completion of the prequalification procedure, the public partner is obliged to pass on to all qualified bidders the invitation to participate in the second stage of the competition and the standard documentation for bid submission according to the Annex 3.

174. The period between the date of transmitting the invitation to participate in the second stage of the competition procedure and the deadline for submission of bids shall be no more than 60 days.

175. It is prohibited to invite to the second stage of the competition procedure an economic operator that has not submitted the offer during the first stage, or which did not meet the criteria for prequalification.

176. Invitation to the second stage of the competition procedure shall contain at least the following information:

- a) references to the informative release relating to the competition with prequalification (the number and date of Monitorul Oficial al Republicii Moldova) and the object of the contract to be awarded;
- b) results of the prequalification stage;
- c) date and time limit laid down for submission of bids;
- d) address to which the bids should be sent;
- e) language in which the bid must be drawn up;
- f) address, the date and time of the opening of bids;
- g) amount of competition guarantee (guarantee for the bid).

177. For the second stage of participation in the competition, the participation fee is not paid.

178. For the submission and evaluation of bids and awarding of public-private partnership contract, its conclusion and the essential clauses, it will be applied the provisions of Chapter IV of these Regulations.

Chapter VI

REQUIREMENTS FOR THE IMPLEMENTATION OF PRIVATE PARTNER SELECTION COMPETITION THROUGH COMPETITIVE DIALOGUE

Section 1

Starting the competitive dialogue procedure

179. Public partner is to apply the competitive dialogue procedure for the awarding of a public-private partnership contract, in the case when the public-private partnership project is considered to be of a particular complexity and the implementation of competition procedure with prequalification would not lead to the award of the public-private partnership contract.

180. The public-private partnership project is considered of a special complexity that project for which the public partner is not able to define the technical specifications, capable to satisfy requirements and demands, it is also difficult for the public partner to

determine the volume of investments and/or the legal framework for implementation of the project.

181. Public partner shall be entitled to apply the procedure of awarding the public-private partnership contract and in the case when there has not been submitted any bid for awarding procedure through competition, or competition with prequalification or none of the offers proposed was considered permissible.

182. Competitive dialogue procedure is carried out in two stages:

183. Stage I is the stage in which the economic operators shall submit the bid to participate in the awarding procedure.

Each economic operator submits a preliminary offer to obtain the invitation to participate to the dialogue with the public partner.

184. Economic operators submitting the bid will acquire the bidder membership in the competitive dialogue procedure. After having completed the process of prequalification of bidders, the Commission establishes the qualified bidders and invites them to dialog. Stage II is the stage for the submission and evaluation of final bids, in order to award the public-private partnership contract.

185. The competitive dialogue procedure is initiated by submitting for publication of an informative release regarding the start of the competitive dialogue procedure which requires the economic operators interested in bid submission. The public partner is obliged to publish in the Monitorul Oficial al Republicii Moldova and on the website of the Agency for Public Property, the informative notice for participation in competitive dialogue.

186. The public partner has the right, in order to ensure maximum transparency, to place the informative notice on the initiation of competitive dialogue procedure and other means of mass media, local, national or international, or the Internet, but only after the publication of this notice in the Monitorul Oficial al Republicii Moldova and on the website of the Agency for Public Property, having the obligation to fully respect the contents and form of the notice published.

187. The period between the date of publication of the informative notice on the start of the competitive dialogue procedure in the Official Gazette and the website of the Agency for Public Property, and the deadline for submission of bids shall be 60 days.

188. The informative notice on the initiation of the competitive dialogue procedure, through which the competition of competitive dialogue initiates, in addition to the information in paragraph 48 of these Regulations shall indicate the criteria for pre-selection of bidders, and other information to Commission decision.

Section 2

Access to submission of bids

189. In the period between the publication date of the informative notice on participation and the deadline for the submission of bids, the public partner has an obligation to ensure that any economic operator is able to get full information about the conditions of participation in the awarding procedure.

190. Any economic operator shall be entitled to submit the bid to participate in the competitive dialogue procedure.

191. Many economic operators have the right to associate for the purpose of submitting the bid or the joint bid, without being obliged to legalise in formal terms the association. But the commitment concerning the association must be submitted in written form.

192. Public partner shall have the right to request that the association should be certified only if the joint bid is declared the winner and only if such a measure is a necessary condition for the proper performance of the contract.

193. Without reducing the liability in regards to the way of executing the future contract for public-private partnership, the bidder shall have the right to include in the technical bid the opportunity to subcontract part of the given contract.

194. In the case when the public partner requires, the bidder is obliged to specify the part/parts of the contract which the one intends to subcontract and recognition data of any subcontractors proposed.

195. To ascertain the qualification data in the competitive dialogue procedure, the economic operator will submit the information certifying:

a) managerial competence, experience, good reputation, qualified personnel, technical equipment, financial capacity, other capacities necessary for proper execution of public-private partnership contract throughout the period of its validity;

b) capacity, and certificates confirming that he is not in the process of liquidation or insolvency, that his heritage is not seized, that his business activity is not suspended;

c) payment of taxes and other mandatory payments in accordance with the legislation of the country in which he resides;

d) failure to apply administrative or criminal sanctions, over the past 3 years, towards the managers of the economic operator in relation to their professional activity or to presenting wrong data for purposes of signing public private partnership contract;

e) composition of the founders and affiliated persons.

To these may be added the quality assurance standards and environmental protection standards.

196. Public partner will take into account the right of the economic operator to intellectual property protection and commercial secrecy.

197. When selecting the participants, the public partner has an obligation to apply objective and non-discriminatory criteria, using for this purpose only minimum skill requirements specified in the standard prequalification documentation to the competitive dialogue procedure.

Section 3

Clarifications regarding the standard prequalification documentation

198. The instructions to bidders at prequalification to the competitive dialogue procedure and other required forms included in the standard prequalification documentation are comprised in Annex No.3, Chapter IV of these Regulations.

199. Any interested economic operator shall be entitled to request clarifications from the public partner under the conditions of Section 3, Chapter IV of these Regulations.

Section 4

The opening of bids

200. The Commission is obliged to open the bids on the date, time and address indicated in the informative notice on initiation of the competitive dialogue procedure and in the standard prequalification documentation.

201. The bids may only be opened in the presence of members of the competition Commission and representatives empowered by the economic operators who have submitted the bids.

202. The opening session is terminated by a report, signed by the members of the Commission, in which the progress of the session shall be recorded, the formal issues found at the opening of bids, their main elements.

203. On request, the Commission will forward a copy of the opening report to the economic operator who has submitted the bid, regardless of whether he/she was or was not present at the opening session.

204. Any decision on the qualification/selection of participants shall be adopted by the Commission in the context of meetings subsequent to the opening session.

Section 5

Evaluation of bids

205. The Commission is obliged to check the compliance with the requirements for qualification by each bidder, laid down in the standard prequalification documentation.

206. The Commission is required to analyze and verify that each preliminary bid precisely describes the solution suggested to carry out the contract object, providing thus the details and reasons of a technical nature, and the manner in which the project management will be achieved during the implementation, in conjunction with the context and the issues that are described in the standard documentation.

207. During the analysis and verification of the documents presented by bidders, the Commission has the right to ask for clarifications or additions at any time of the documents presented by them for demonstrating the achievement of qualification requirements.

208. The bidder is obliged to respond to requests for clarification of the competition Commission by submitting qualification documents, within the period specified in the request.

209. The offer will be rejected in the following cases:

1) it does not meet the minimum qualification requirements established by the standard prequalification documentation

2) it did not respond, or not answered conclusively, to requests for clarifications to the Commission;

3) it was found that the preliminary offer:

a) does not present a solution that is based on the needs of the public partner or that it is not described by the use of specific technical benchmarks, thus does it not make a comment on each task with a technical description of the elements, to be carried out during the implementation of the contract object;

b) it does not demonstrate the comprehension of the context in which the object of the contract is included, thus, it does not make a comment on the implications that may have on the proposed solution, the information from the various studies that have been included in the offer. Also, it does not propose measures relevant to the management of risks that may affect the implementation of the contract and/or does not describe how the proposed solution correlates with the rest of the information that have been made available through the standard prequalification documentation;

c) it does not propose an execution/provision program to cover the activities to be carried out during the implementation of the contract object in conjunction with human and material resources allocated;

d) it does not identify the landmarks associated with the implementation of the proposed solution, or they are insignificant, or not assigned correctly in time, in relation to the succession of activities presented.

Section 6

Establishment of the short list of bidders with whom the competitive dialogue will run

210. After having completed the process of qualification of bidders, the Commission shall draw up a report on the manner in which was conducted the evaluation of submissions.

211. Public partner is obliged to inform all the bidders about the outcome of the prequalification.

212. After completing the short list, the public partner is obliged to send an invitation of participation in the dialogue to all bidders admitted. The invitation shall be sent to them at the same time.

213. It is prohibited to invite in the dialogue a bidder who submitted the bid or who has not fulfilled the minimum requirements of prequalification.

214. Invitation to dialogue must include at least the following information:

a) the address to which the dialogue will take place, as well as its launching date and time;

b) the language in which the dialogue will run;

c) the content of the main elements upon which the dialogue is performed, based on the issues detailed in the preliminary bid and based on the interests and objectives of the public partner.

Section 7

Carrying out the dialogue with bidders from the short list

215. Public partner is running the dialogue with the bidders admitted in the short list, in the context of some meetings organized separately with each of them. Within this dialogue are discussed the options relating to the technical aspects, the volume of investments and their source, the way of solving the problems related to the legal framework, and any other elements of the future contract, so the solutions identified to meet the needs of the public partner objectives.

216. At this stage the public partner collects information necessary for drawing up the specifications that he/she didn't know to define from the start, as well as information related to the establishment of contractual terms that will govern the contract execution.

217. At the end of each meeting, the Commission shall record in a report the issues discussed and aspects agreed during the meeting. The minutes shall be signed by the members of the Commission and the participants in the dialogue.

218. During the dialogue, the public partner is obliged to ensure the application of the principle of equal treatment with respect to all participants. In this respect, the public partner is not entitled to provide information in a discriminatory manner that could create one/some of the participants an additional benefit in relation to others.

219. Public partner has an obligation not to disclose, without consent to the participant concerned, the solution proposed and other confidential information submitted by him/her.

220. The public partner conducts the dialogue until one identifies solution/solutions appropriate to his/her objective needs. This means that bidders may be invited to more

meetings, until the public partner clarifies own options. For each meeting it will be drawn up a separate report.

221. In the case when this stage of the competitive dialogue procedure cannot be completed by identifying a viable solution, the public partner has the right to cancel the awarding procedure.

Section 8

Preparing final standard documentation on the basis of the solution/solutions identified;

Formalities for the submission of final bids

222. Public partner will transpose the solution identified in a document titled the final standard documentation, containing technical, legal and financial aspects, which have been established as a result of dialogue with bidders who satisfy the requirements of the public partner in case of the contract to be awarded. This document represents the consolidated form of all the improvements and additions to the standard documentation as a result of the integration of the information obtained during the course of the dialogue with bidders admitted. Final standard documentation is approved by the Commission and transmitted to the bidders with whom the dialogue was held, once with the invitations for the submission of the final bids. The bids to be submitted shall be drawn up on the basis of the requirements of the final form of the final standard documentation.

223. It is prohibited to transmit the invitation of submission of the final bid to the bidder who did not attend the competitive dialogue. Public partner is obliged to forward the invitation for the submission of the final bid with a sufficient number of days before the deadline for the submission of bids, so that each participant selected to receive a reasonable period for the preparation of the final bid.

224. The period of time allowed for the preparation of the final bid must not be less than a minimum period agreed with the participants selected during the dialog progress, but not more than 60 days.

225. The notice of final bid submission must include at least the following information:

a) references to the informative release relating to the prequalification competition (number and date of Monitorul Oficial al Republicii Moldova) and the object of the contract to be awarded;

b) date and time limit laid down for submission of bids;

c) address to which final bids shall be submitted to;

d) language in which the final bid must be drawn up;

e) address, the date and time of the opening of final bids;

f) guarantee for offer.

g) the results of the prequalification stage;

226. For the second stage of the competition participation the participation fee is not paid.

227. Subsequent procedures for the awarding of the public-private partnership contract including its signing conditions will take place according to the requirements stipulated in Chapter 5 of these Regulations.

Chapter VII MONITORING, CONTROL AND RECORDS OF PUBLIC-PRIVATE PARTNERSHIP

Section 1 Control of public-private partnership progress

228. Public partner carries out annual control over the implementation way of public-private partnership, including through the appointment of an independent auditor.

229. The private partner is obliged to ensure public partner free access to the public-private partnership object, as well as to all information and documents relating to the implementation of the public-private partnership.

230. Violation of the terms of contract and any other irregularities identified by the control, specified in the paragraph 133, is removed immediately, or within the term agreed by written agreement concluded between the public partner and the private partner.

231. Control of public-private partnership progress can be performed also by control and auditing authorities of the state in accordance with the legislation in force.

Section 2 Access to information

232. The private partner is required to provide, upon request, information on the implementation of public-private partnership, as well as about its tasks and competences, rights and obligations of its customers and consumers, with the exception of official information with limited accessibility, of personal information and the information constituting a State secret or a trade secret.

233. Public partner has no right to disclose confidential information about the private partner. The type and nature of such information shall be determined by the parties.

Secțiunea 3 Monitoring and evaluation of public-private partnerships

234. Monitoring and evaluation of public-private partnerships at the national level is carried out by the Agency for Public Property.

235. Projects of public-private partnership initiated by the authorities of local public administration or public administration authorities of the autonomous territorial unit with special legal status, are monitored by the local government authority of the territory of the respective administrative-territorial unit. Providing monitoring and control of the public-private partnership projects belongs to the direct competence of the mayor or to the Chairman of the given district jurisdiction.

Section 4 Public-private partnership file

236. The set of documents relating to the project of public-private partnership, of the initiation phase and throughout the project implementation, is the file of the public-private partnership project.

237. Collecting information for the file is the obligation of the public partner. The file of public-private partnership project will contain the following documents: 1) feasibility study;

- 2) document which provides proof of the initiation of the public-private partnership project;
 - 3) informative release at each stage of the competition;
 - 4) competition documentation;
 - 5) minutes of the meetings of the Commission;
 - 6) bid application forms submitted within the procedure for the private partner selection;
 - 7) evaluation reports at each stage of the competition;
 - 8) proof of communications relating to the result of procedures for the awarding of public-private partnership contracts;
 - 9 public partnership contract is signed;
 - 10)complaints made under the procedure for selecting the private partner, if applicable;
 - 11) other documents or papers relating to the public-private partnership project.
238. The file of the public-private partnership project will be kept in the archives of the public partner for an unlimited period.

Section 5

Records of public-private partnerships

239. To ensure the records of public property, works and services on the basis of which the public-private partnerships were created, copies of the contracts concluded with private partners shall be transmitted to the Agency for Public Property to be entered in the Register of public heritage, in the manner established by the Government.

240. In the Register for public heritage are included the data concerning the object of the contract and duration of its execution, on the time for investment performance and for payment of the fee, concerning environmental obligations, other information related to the implementation of public-private partnership.

To the Regulations regarding the standard procedures and general conditions for the private partner selection

The content-framework of feasibility study

I. General data:

- 1) the purpose and objectives of the feasibility study
- 2) data about the public partner
- 3) data on the natural/ legal person drawing up the feasibility study.

II. Description of the general framework for achieving the public private partnership project:

- 1) the name of the public-private partnership;
- 2) summary presentation of the existing situation, with the elucidation of the major shortcomings of the current situation resulting the need of investment, including, where appropriate, tables, graphical maps, pdrawn sketches, photographs, etc. explaining the actual situation and the need for investment;
- 3) opportunity of promoting the public private partnership project with technical and economic justification that demonstrates the necessity and advisability of the project of public-private partnership;
- 4) including the objective within the general, sectoral or regional investment policies for short-and medium-term;
- 5) beneficiaries of the public-private partnership project;
- 6) legal framework governing the field.

III. The main features of the public-private partnership project:

- 1) objectives of public-private partnership project;
- 2) results achieved by the project for public-private partnership;
- 3) activities for implementation of public-private partnership;
- 4) investments necessary for carrying out the project of public-private partnership.
- 5) form and manner of implementation of PPP project;
- 6) techno-economic scenarios for achieving the objectives of the public-private partnership project;
- 7) organisational and implementation procedures of the public-private partnership project;
- 8) program for the implementation of the project of public-private partnership;
- 9) cost estimation for each item and component of the public-private partnership project;
- 10) data on the territory on which the object will be placed, the legal status of the territory, the way/form of contract to be transmitted to the private partner; the estimated area of land;
- 11) justification of the term for the public-private partnership project and transmission conditions of the object or service after completion of the contract;
- 12) other elements necessary for demonstrating the safety and viability of the project;

IV. Identification and analysis of the risk-sharing options after their management capacity:

- 1) political risk;
- 2) legal risk;
- 3) economic and financial risk);
- 4) execution risk;
- 5) environmental risk, etc).

V. Factors that ensure the sustainability of the public-private partnership project:

- 1) major techno-economic indicators of investment (the total investment amount; staggering return on investment; identification and defining objectives, including the specification of the reference period);
- 2) funding sources of the investment (equity, bank loans, funds from the state/local budget; external credits contracted or guaranteed by the State; external grant funds; other sources legally constituted);
- 3) financial analysis, including the calculation of financial performance indicators: internal rate of return and the cost-benefit ratio;
- 4) economic analysis, including the calculation of economic performance indicators: project implementation graphs using GANTT, PERT , SWOT model, etc.;
- 5) estimates of employment by the project for public-private partnership, where appropriate;
- 6) environmental impact and its mitigation solutions including referred costs;

VI. Conclusions.

To the Regulations regarding the standard procedures and general conditions for the private partner selection

The framework structure of the public-private partnership Contract

The public private partnership contract will include sections with a minimum of the following information:

Chapter I. General conditions

- 1) Data about the signing parties;
- 2) Purpose of the contract;
- 3) Form and manner of implementation of the contract;
- 4) Object of the public-private partnership (technical and economic feature);
- 5) Proprietary rights;
- 6) Confidentiality;
- 7) Conditions of insurance;
- 8) Force majeure;
- 9) Authorization and approvals.

Chapter II. Duration of contract

- 10) Establishment of execution period of the public-private partnership;
- 11) Stages of implementation of public-private partnership;
- 12) Operation term of the public-private partnership object, if appropriate;
- 13) Duration of the project implementation;
- 14) Maximum duration of construction or modernization, if appropriate;
- 15) Operation and technical service, if appropriate;
- 16) The means and the procedure for returning the public-private partnership object at the time of expiry of the public-private partnership term.

Chapter III. Financial and technical commitments

- 17) Obligation of public partner regarding the co-financing the public-private partnership object, if appropriate;
- 18) Obligation of private partner regarding the creation and/or reconstruction of public-private partnership object;
- 19) Obligation of partner concerning the execution of repairs for public-private partnership object in the case when this fact has been included in the list of requirements of the public partner or assumed by the private partner at the stage of conducting the competition for private partner selection;
- 20) Obligation of private partner regarding the maintenance, in accordance with the law, of facilities for some categories of population;
- 21) Means of assuring the commercial freedom.

Chapter V. Technical and other conditions

(A) Technical conditions that relate to the following financial aspects:

- 22) Invested capital or, if appropriate, initial capital subscribed and paid up;

- 23) Debt-to-capital ratio, if appropriate;
- 24) Rate of coverage, if applicable;
- 25) Dividends, if appropriate;
- 26) Rate applicable to interest;
- 27) Currencies of loans and financing sources;
- 28) Recovery means of investment by each party to the contract.

(B) Technical conditions concerning the construction or upgrading clauses, if appropriate:

- 29) Standards and specifications;
- 30) Methods of operation;
- 31) Construction quality standards;
- 32) Purchase of materials;
- 33) Construction characteristics, as appropriate;
- 34) Technologies for construction, where appropriate;
- 35) Program of supplementary works, if applicable;
- 36) Temporary and precautionary measures;
- 37) Rules concerning the manner of use of the land owned by the public partner;

(C) Technical conditions concerning using and operating clauses, if applicable:

- 38) Performance specifications;
- 39) Amount of goods to be produced, for the work to be performed, the services to be provided;
- 40) Infrastructure capacities;
- 41) Equipment specifications;
- 42) Performance criteria in the case of fiduciary administration contract.

(D) Technical conditions concerning economic and financial clauses:

- 43) Amount of fees/charges collected and the way of collection;
- 44) Period for which the fees/charges will be levied, if appropriate;
- 45) Frequency and criteria for updating the fees/charges, if applicable;
- 46) Payment for the use of the object of public-private partnership, the form, term and procedure for payment.

Chapter VI. Monitoring and control

- 47) Monitoring the design, construction and operation of public-private project, as well as the other activities covering the object of the public-private partnership object;
- 48) Financial auditing mechanisms for the operating period of the public-private project;
- 49) Supervision procedures on the achievement of the public-private project objectives;

Chapter VII. Risks and guarantees

- 50) Clauses concerning the distribution of risks throughout it;
- 51) Definition of financial and currency risk guarantee;
- 52) Special guarantees, where applicable;

Chapter VIII. Liability and indemnification

- 53) Clause of repair/ indemnification for injury;
- 54) Penalties for the situation of failure to execute the objectives laid down in the contract;
- 55) Liability for failure to perform the obligations in the case of cancellation and/or termination of the contract, if appropriate;

Chapter IX. Cancellation and termination of contract

- 56) Contract termination clauses;
- 57) Conditions for unilateral cancellation or agreement of the parties;
- 58) Clauses of withdrawal from the project, if applicable;

Chapter X. Specific provisions

- 59) Requirements for setting up a company for the project achievement, as appropriate, the establishment of shares for participation of public partner and private partner within the company;
- 60) Land purchase, if applicable;
- 61) Means of ensuring the rights of exclusivity, if appropriate;
- 62) Amendments acceptable in the project;
- 63) Compensatory formulas, if applicable;
- 64) Fees and taxes;
- 65) Prohibitions of substituting the signatory parties;
- 66) Procedure for connection and communication;

Chapter XI. Final provisions

- 67) Definitions and interpretations;
- 68) Legislation and applicable jurisdiction;
- 69) Amendments in legislation;
- 70) Amendments to the contract;
- 71) Notifications;
- 72) Method for settlement of disputes;
- 73) Contract language;

Annexes (drawings, tables, sketches, technical data and/or other type, if applicable.)

Note: The form, the structure and content of the public-private partnership contract will be negotiated and finalized taking into account the above Sections, which can be partly or wholly detailed in the content of the contract or to which can be added and other specific terms of public-private partnership project to be signed.

To the Regulations regarding the standard procedures and general conditions for private partner selection

INSTRUCTIONS CONCERNING THE EXECUTION OF PROCEDURES FOR AWARDING PUBLIC-PRIVATE PARTNERSHIP CONTRACTS

**CHAPTER I
GENERAL INFORMATION**

1. Information regarding the public partner

Name of public partner.....
Fiscal code:.....
Registered office:.....
Contacts (tel/fax; e-mail):.....

2. Purpose of the awarding procedure

The public partner invites legal and natural persons interested to submit bids for the selection of the private partner in a public-private partnership project under the conditions set out in the informative release published in the Monitorul Oficial al Republicii Moldova No. ... of and in the specification.

3. Object of public-private partnership project:

Description:

Short description of the public-private partnership object.....
terms of project implementation (included within the awarding documentation).

Source of funding:

The sources of funding for the contract to be awarded are specified:

4. Awarding procedure

For private partner selection are applied the following awarding procedures of the public-private partnership contract:

1) Competition for selection of the private partner.

The competition procedure will take place in a single stage, in accordance with the provisions of the Chapter IV of the Regulations concerning the standard procedures and general conditions for the selection of the private partner.

2) Competition for selection of the private partner with prequalification

Competition procedure with prequalification stage will run in two phases in accordance with the provisions of the Chapter V of the Regulations regarding standard procedures and general conditions for the selection of the private partner.

3) Competition for selection of the private partner through the competitive dialogue

The competition procedure of competitive dialogue will run in two phases in accordance with the provisions of the Chapter VI of the Regulations concerning standard procedures and general conditions for the selection of the private partner.

5. Principles underlying the selection of private partner

efficient use of public heritage and public capital;
transparency;
contract freedom;
ensuring competition;
proportionality;
balance;
treatment equality, impartiality and non-discrimination;
confidentiality.

6. Means of appeal

It shall be specified the competent institution and the way in which people deemed to have been injured in a right or a legitimate interest by an error or irregularity employed during the proceedings conducted for the award of the contract, can appeal that act.

7. Other information

It shall be specified the identification and contact of the institutions from which potential bidders can obtain relevant information on the obligations relating to taxes, to environmental protection, employment protection provisions and the working conditions in the Republic of Moldova etc. that will be applied during the execution of the contract.

8. The applicable law

The selection of the private partner is carried out in accordance with the provisions of the following legal acts in force in the Republic of Moldova:

Law No. 179-XVI of 10 July, 2008 regarding public-private partnership;

Law No. 534-XVI of 13 July, 1995 on the concessions and other normative acts.

CHAPTER II PARTICIPATION TO THE AWARDING PROCEDURE

9. The procedure for bid submission

This procedure shall be open on equal terms to all natural and legal persons or associations of natural persons and/or legal entities, formed in accordance with the legal provisions, hereinafter referred to as economic operators.

The partnerships formed of economic operators may submit a bid, provided that all persons participating in the partnership have signed an association agreement with the appointment of one of them as the leader..

The partnership agreement will necessarily stipulate arrangements and namely:

- a) capital contribution);
- b) financial commitment in terms of a percentage of the contract value;
- c) responsibilities for the execution of the contract.
- d) risk sharing.

Partnerships are not required to be created in a legal form in order to present the offer. In the case when the winning bidder is a partnership, then such an association does not have to be created in a specific legal form, but it has to legalize the Partnership Agreement before a notary.

An economic operator does not have the right, under the same procedure to submit two or more individual offers and/or common, under the penalty of exclusion from the competition of all the bids in question.

Public partner reserves the right to verify all the information given in the bid.

The public partner is not responsible for the completeness of the standard documentation, in the case when it has not been obtained directly from the public partner.

The economic operator should carefully examine and comply with all of the standard forms to this instruction.

Failure to provide all the information or documents provided for in the standard documentation leads to the rejection of bids.

Through the submission of bis, it is considered that the economic operator is aware of all laws, acts and regulations applicable in the Republic of Moldova, which can however affect operations or activities that are subject to this procedure and the contract resulting from this.

10. Conflict of interest

a) It is not entitled to be the a bidder, associated bidder or subcontractor, under the penalty of exclusion from the award procedure: the legal or natural person directly involved in the process of verification/evaluation of bids;

b) natural or legal person, who participated in the preparation of standard documentation, underlying the conduct of procedure for awarding the public-private partnership contract.

11. Explanations of standard documentation submitted by economic operators

Economic operators have the right to obtain further details and/or documentation clarification related to the content of standard documentation.

12. The bid price

The bidder will bear the costs relating to the preparation and submission of the bid and the public partner will not be responsible for these charges, regardless of the manner of organization or the outcome of the bidding procedure.

The public partner will take ownership of all the bids submitted in this awarding procedure, and the bidders do not have the right to request the return of the bids by the public partner.

13. Visiting the object of public-private partnership project

Public partner is obliged to allow the bidder to visit the object of the public-private partnership project.

The bidder shall have the right to visit the object of public-private partnership project, and get all the information that may be necessary in order to prepare the bid. The bidder shall bear the costs of visiting the object.

14. Situations determining the exclusion of the bidder from the awarding procedure

The economic operator/bidder is excluded from this proceeding if:

a) was sentenced in the past five years by a final court decision for participating in activities of a criminal organisation, corruption, fraud, money laundering.

b) is in the process of liquidation or insolvency, the property is seized or its activities are suspended;

c) has not fulfilled obligations for the payment of taxes, charges and social security contributions to the state budget, local budgets and state social insurance budget, in accordance with the legal provisions in force in the Republic of Moldova, or in the country in which the bidder is established;

d) has under management, persons who have been convicted over the past 3 years, by final judgment of court, for an act that brought up the professional ethics or for committing a professional mistake liable to affect the future execution of the contract;

e) in the past 2 years the bidder fulfilled or inappropriately fulfilled own contractual obligations, a fact that produced or is likely to cause serious damage to ones beneficiaries, as far as the contracting authority may bring as proof probable means to this end;

f) provides false information in documents submitted;

g) is included in the list of prohibition of economic operators.

The bidding economic operator shall submit a statement on his own responsibility, written in accordance with the **Standard Form 1** attached to this instruction.

Chapter III BID SUBMISSION

15. The language of the bid preparation

The bid and documents pertaining thereto shall be drawn up in the official language of the Republic of Moldova. Technical documentation (leaflets, brochures, manuals, etc.) and documents issued by international institutions/public bodies may be presented in any other language, provided that they are accompanied by a certified translation into the state language of the Republic of Moldova.

16. The period of validity of the bid

Public Partner determines the estimated period of validity of the bid until the conclusion of the contract necessary to the analysis and evaluation of bids, settling any disputes. The period during which the bidder is obliged to keep the bid valid.

All bids valid for a period shorter than that provided for in this section will be rejected by the Commission for the selection of the private partner as being inappropriate.

Public partner shall have the right to request the bidders, in the event of exceptional circumstances, before the expiry of the period of validity of the bids, the extension of this period.

If the case of extending the period of validity of the bid, the period of validity of the bid bond will be extended accordingly.

The bidder is obliged to communicate to the public partner whether or not he agrees with the extension of the period of validity of the bid .

The bidder who does not agree to extend the period of validity of the bid will not lose bid bond.

17. deadline and ways for submission of the bid

The bidder must take all necessary steps, so that the offer to be received and registered by the public partner until the deadline for the submission of bids.

The details to be included:

1. *Submission date (dd/mm/year/hour):*
2. *Place of submission:*
3. *Way of bid submission (packing, sealing, marking the envelopes containing the documents of the bid):* by recommended letter with confirmation of delivery (postal service) or delivered personally to the *full address of the public partner*.

The whole bid will be signed and sealed on each page, numbered in ascending order from the first to the last page, the latter comprising the words "LAST PAGE".

Application for participation in the competition shall be completed in accordance with the **Standard Form (2)**, annexed to this instruction, signed and dated.

The bids submitted by means other than those mentioned above, or to other address will not be taken into account.

Regardless of the means of submission/transmission the bidder assumes the risks of bid transmission, including force majeure.

18. The way of submission

The bidder must submit a copy of the technical bid, financial bid and a copy of documentation pertaining thereto on paper and in electronic form.

The bidder shall develop and present a copy of the original documents comprising the bid, as it is described and which will be marked "ORIGINAL" and 2 copies of the offer and clearly marked "COPY".

The bid and documents pertaining thereto must be printed or written in indelible ink and signed on each page by a representative duly authorized to bind the bidder in the contract. In the case of documents issued by the institution empowered to that end such documents must be signed and initialled in accordance with legal provisions. The bid will **necessarily** contains a **list of documents** to be submitted.

Any add, erasure, leading or written over the one before are valid, only if they are endorsed by the person authorized to sign the bid.

In the event of a discrepancy between the original and the copy, the original will prevail. In the event of discrepancies between the version on paper and in electronic form, the one on paper form (original) will prevail.

19. Sealing and marking the bid

The bidder shall seal the bid and related documents in a single exterior nontransparent envelope where it will be written the following information:

- a) full name and address of the public partner;
- b) the name of the project for which the bid is being submitted, as well as the issue number of Monitorul Oficial al Republicii Moldova in which was published the informative release on prequalification/ competitive dialogue/competition:
- c) Outer envelope must be marked with the inscription ' DO NOT OPEN BEFORE THE DATE OF ____ 20 ____, TIME____, '.

d) Outer envelope must be marked with the name and address of the bidder in order to allow the return of the bid without being opened in the case when the bid is stated to be delayed.

The outer envelope contains: documents certifying evidence of eligibility, documents certifying technical capacity and documents of financial capacity and an inner envelope which will contain the technical and financial bid. The financial bid will be inserted in a separate envelope, marked accordingly.

Public partner assumes no responsibility if the competition participation documents are not intact, sealed or outer envelope is not marked as described above.

20.Modification and withdrawal of bid

Any bidder shall have the right to modify or withdraw the bid prior to the deadline set for the submission of the bid and only through a written request to that effect.

In the case when the bidder wishes to make changes in the offer already filed, he shall be obliged to ensure the receipt and registration of such changes by the public partner until the deadline for the submission of bids.

The bidder shall not have the right to withdraw or amend the offer after deadline for the submission of bids, under the penalty of his exclusion from the procedure for the awarding of public-private partnership contract and loss of bid bond.

Notification to the bidder regarding the modification, replacement or withdrawal shall be prepared, sealed, labeled, and delivered in accordance with paragraph 18 in outer and inner envelopes, additionally marked with "MODIFICATION", "REPLACEMENT" or "WITHDRAWAL", as appropriate.

No bid may be modified by the bidder after the deadline for submission of offers.

21.Delayed bids

The offer that is submitted/sent to another address than that specified in the notice or informative release or it is received by the public partner after the expiry of deadline for filing shall be returned without being opened.

22. The joint bid

More economic operators have the right to associate and to submit a joint bid being obliged to submit the association agreement in written form. Each of them assumes the obligation for the joint bid and are responsible for any consequences of future contract for public-private partnership.

Associated bidders do not have the right to submit other offers individually, in addition to the joint bid.

CHAPTER IV

BID COMPONENTS

23.Outer envelope:

Documents certifying the eligibility of the bidder:

1) A statement on his own responsibility, filled in accordance with the **Standard Form (1)** attached to this documentation

2) **Application for participation in the competition for the selection of the private partner**, drawn up in accordance with the model set out in the **Standard Form (2)**, attached to this instruction, accompanied by documents such as: proof of registration of the legal person in accordance with the provisions of the legislation of the Republic of Moldova, documents proving debt absence or presence to the national public budget. For foreign legal persons, the economic operator will present the documents proving legal form for registration in the country of residence of the bidder.

3) **Declaration on the confirmation of the offer drawn up in accordance with the Standard Form (3)** attached to this instruction. In the case when the bid is submitted by an association, each member, including the leader will submit this form.

4) **Fee payment document.** The bidder is to submit the order of payment original of the competition participation fee.

5) **Empowerment.** The bid will be accompanied, where appropriate, by the written authorization, together with a copy of an identity document (identity card/passport) of the person representing the bidder, by which the signer of the bid is authorized to bind the bidder in the procedure for the awarding of the contract for public-private **partnership**, filled in accordance with the **Standard Form (4)** attached to this instruction.

Documents certifying the technical capacity of the bidder:

6) **Involvement in judicial proceedings.** The bidder is to submit accurate information concerning any current or past disputes in accordance with the **Standard Form (5)** attached to this instruction. The existence of litigation against the bidder or any associate may result in rejection of the bid.

7) **Overall experience.** The bidder is to submit the information on the annual turnover for the past 5 years in accordance with the **Standard Form (6) and Standard Form (6A)** attached to this instruction, to be presented in the case of Partnership..

8) **Similar experience.** The bidder is required to enumerate all contracts of a similar nature and complexity to the public-private partnership contract to be awarded in accordance with the **standard form (7) and standard form (7A)** attached to this instruction and specific requirements laid down by the public partner is to establish in the specification.

9) **Staff qualifications.** The bidder must have appropriately qualified staff to execute the obligations in case of awarding the public-private partnership contract. For each function, the bidder shall submit information in accordance with the **Standard Form (8) and (8A)** attached to this instruction.

Bid bond. The bidder shall submit the original of the payment order, or where appropriate, a letter of guarantee for the bid. The bid bond may be submitted in the form of bank guarantee or confirmation of payment by the bidder of the guarantee on the account indicated by the public partner.

At the submission of a bid in the framework of the first stage of the procedure of prequalification /competitive dialogue, the bid bond is not submitted.

Documents certifying economic and financial capacity:

10) The bidder must demonstrate that he has access to or has liquid assets, unencumbered assets, lines of credit and other financial resources that are sufficient to

satisfy the investment and operational cash flow. The **Standard Form (10)** attached to this instruction, in accordance with the requirements specified in the bid book, financial statements must be submitted, including the auditing documentation and profit and loss accounts for the past 5 years, and it is required to demonstrate the reliability of the financial position of the bidder, showing the long term profitability. In case of necessity the public partner may request information from banking institutions indicated by the bidder.

24.Plíc interior

The inner envelope will contain technical and financial bid

1) The technical bid

For prequalification stage of competition procedure with prequalification, technical bid submission is not required.

For the prequalification stage of the awarding procedure through competitive dialogue, the public partner will be required to prepare a preliminary draft of preliminary technical bid according to the **Standard Form (15)** document by which the bidder proves in the first stage of the procedure the understanding of the context in which the object of the contract is included resulting from the conduct of the competitive dialogue procedure and also offers preliminary (General) solutions that meet the needs and constraints of the contracting authorities, the way they were presented by descriptive documentation.

The bidder will develop the technical offer, so that it fully complies with the requirements laid down in the bid book.

The technical offer will contain:

a)system of quality assurance and management in the works that make up the object of the offer which includes:

description of the quality system applied to the work, including the lists of related quality system procedures;

the lists of technical execution procedures of the main categories of works on object achievement and quality control plan, checks and tests;

own laboratories or based on contract, used, accredited and authorized, with a degree corresponding to the works;

b)chart of work performance;

Bidders shall have full freedom to include in the offer their own consumption and execution technologies, observing the qualitative and quantitative requirements set out in the technical draft, specification and other normative acts in force governing the execution of the works.

If appropriate, the bidder shall submit a technical offer which will include a detailed presentation of the services offered that comply with the requirements specified by the Public partner, as indicated in the specification documents, and any other information, in sufficient, so as to demonstrate the adequacy and way of provision of services. In particular, the technical offer includes information related to the methodology of approach, activities, timelines, etc.. .

2) Financial bid

The financial bid will be presented according to the **Standard Form (11)**. Depending on the type of contract to be awarded, the financial bid will be completed by other information.

For the stage of prequalification of competition with prequalification/competitive dialogue, the financial bid is not submitted.

The price of the financial bid will be expressed in MDL and euro without VAT (entries will be made on the reference exchange lei/euro that will be used when comparing bids).

The bid has a firm and legally binding character in terms of content throughout the period of validity of the bid.

The bidder shall submit detailed financial bid on the basis of the elements of the total price proposed for execution of the contract which is the object of this contract awarding procedure.

In filling in the form of financial offer, the bidder must take into account the deductions made in accordance with the legal provisions, if any, and all other expenses necessary for the fulfilment of his obligations as well as costs and profit.

Prices offered must include fees and taxes, as well as other contributions required by law for services rendered.

The bidder will prepare the financial bid, so that it can provide all the required information on prices, tariffs and other trade and financial conditions related to the contract object of public-private partnership. The financial offer will be accompanied by estimate of costs regarding the bid.

25. The bidder may submit any additional information to supplement its bid compliance with standard documentation. Any additional documents will be marked with the phrase "**ADDITIONAL INFORMATION**" which is included in the **Standard Form (16)**. The information is for informational use only, they are not part of the bid, and will not be taken into account during the evaluation of bids.

CHAPTER V BID OPENING

26. Bid opening

The Commission will open the bids in open meeting, including withdrawals, substitutions and modifications submitted in the presence of representatives of bidders who want to attend at the time and place specified in the informative notice. Representatives of bidders present will sign in a register that confirms their presence. The bids shall be opened in the order of their submission. No bid may be rejected at opening, except the delayed ones that are returned unopened.

27. At the opening, the Commission will examine the contents of the outer envelope, in order to establish for each bidder if:

- a) the offer is complete;
- b) the participation fee has been paid
- c) the bid is accompanied by a bid guarantee, if appropriate.

28. Each member of the Commission and each bidder who signed the opening minutes shall be entitled, upon request, to receive a copy of it.

29. Confidentiality

The public partner is obliged to preserve the confidentiality of the content of the bid, as well as on any information concerning the bidder whose disclosure could affect his right to protect intellectual property or trade secrets.

The Commission and the other co-opted experts are required to sign at own risk, before undertaking specific duties within the evaluation process, a statement of confidentiality and impartiality and by which acknowledging that they are not in a situation that involves a conflict of interest, **in accordance with the standard form 12** attached to this instruction.

Information relating to the examination, clarification, evaluation and comparison of bids, and the recommendation concerning the awarding of a public-private partnership contract, they will not be disclosed to bidders or any other persons who are not officially involved in this process by the time of the official confirmation of awarding the contract to the winning bidder.

30. Fraud and corruption

The bidder has no right to influence or attempt to influence the Commission for selection of the private partner in the process of examination and evaluation of bids or in the decision laying down the winning bid, under penalty of ones exclusion from the procedure followed for the selection of the private partner.

The bidder shall have the right to bring clarifications and/or the documents accompanying the offer only in response to a written request from the public partner and only in written form.

CHAPTER VI SPECIFIC PROCEDURES FOR EVALUATION AND SUBMISSION OF BIDS IN THE COMPETITION WITH PREQUALIFICATION /COMPETITIVE DIALOGUE

Section 1

Prequalification of bidders in the first stage of the procedure of the prequalification competition/competitive dialogue

31. Prequalification of bidders in the prequalification competition procedure

The procedure, method, criteria and conditions for the selection of bidders shall be carried out in accordance with the provisions of paragraphs 155 to 176 of the Regulations on standard procedures and general conditions of private partner selection.

32. Prequalification of bidders in the competitive dialogue

The procedure, method, criteria and conditions for the selection of bidders shall be carried out in accordance with the provisions of paragraphs 203-225 of the Regulations on the standard procedures and general conditions of private partner selection.

Section 2

Invitation to participate in stage two of the procedure of the competition with prequalification /competitive

33. Participation invitation with the bid

The bidder who received an invitation to participate in the second stage of the competition with prequalification or competitive dialogue shall be entitled to obtain further details and/or clarification to the content of the standard documentation.

Standard documentation for the conduct of the competition with prequalification /competitive dialogue will be set up in accordance with the provisions of Annex No.3 of the Regulations on standard procedures and general conditions for the selection of the private partner. In drawing up the bid for competition with prequalification /competitive dialogue, the bidder is required to specify the supporting documents to update its initial application to prequalification and confirm that the other information submitted initially at the prequalification phase are essentially correct and shall be valid from the date of submission of the bid. In the case when in the supporting documents no change was made on the standard forms, the bidder must indicate clearly the phrase "NO CHANGE MADE".

CHAPTER VII EVALUATION OF BIDS

34. Examination of bids

The Commission in the context of the meetings subsequent to the session of bid opening will examine the contents of the outer envelope to determine for each bidder if:

- a) the documents have been signed accordingly;
- b) the offer substantially complies with the requirements of the specification.

An appropriate bid is the offer that corresponds to all of the terms, conditions and specifications of the bid book, without significant deviations or conditions. A significant deviation or condition is the one that:

- a) affects the scope, quality or execution of the public-private partnership contract;
- b) limits the rights of the Commission or obligations of the bidder set out in the project of the public-private partnership contract as set out in the contract documents; or
- c) the correction of which would adversely affect unfairly the competitive position of bidders presenting other offers.

The Commission may disregard any minor non-compliance or irregularities of an offer, which does not represent a significant deviation, provided that this disregard does not cause damage or affects the relative rankings of any Bidder.

If a bid is not adequate, it will be rejected by the Commission, and may not subsequently be considered appropriate by correcting or withdrawing the irregularities.

The Commission shall reject a bid in any of the following cases:

- a) the bid did not meet the requirements stipulated in the standard documentation;
- b) the bidder does not transmit during the period specified by the Commission the requested clarifications;
- c) the bidder changes, by clarifications he submits, the technical bid content and/or of financial bid, except where the change is determined by correcting arithmetic errors;
- d) the bid contains proposals on contractual clauses, which are obviously disadvantageous to public partner;
- e) explanations requested are not conclusive and/or are not supported by certifying documentation required by the Commission.
- f) if the offer, including forms pertaining thereto, does not meet the requirements prescribed in the bid book or it is not filled in, signed and stamped correspondingly.

In the case of an offer that has an unusually low price in relation to the work to be performed, the Commission will require, in written form, details and clarifications that they consider relevant in respect of the bid, and will verify the answers justifying that price. In the case when the bidder fails to demonstrate access to a special technology or a more advantageous market condition to justify the price proposed, the Commission would reject the offer.

35. Clarification of bids

In order to facilitate the evaluation and comparison of bids, the Commission, at its discretion, may require any bidder for clarification of his offer, including his financial bid specifications. Such a clarification can be required at any stage up to the decision to award the contract for public-private partnership. Requests for clarification and replies must be sent and received in writing, by fax or by e-mail, and is not allowed or offered or permitted any substantial change in the bid, with the exception of the request for confirmation on correcting arithmetic errors found by the Commission in the evaluation of bids.

36. Correcting errors

The only change to the contents of the financial bid that is permitted in the bid, is the correction of possible arithmetic errors.

Arithmetic errors shall be corrected as follows:

a) if there is a discrepancy between the price for a unit of measure and the total price (which is obtained by multiplying the price to total quantity), it will be taken into account the price per unit, and total price will be corrected accordingly;

b) if there is a discrepancy between the letters and numbers, it shall be taken into account the value expressed in letters, and the value expressed in numbers will be corrected correspondingly.

The Commission has the right to correct arithmetic errors only with the agreement of the bidder. If the bidder does not agree to correct such errors, his/her bid will be deemed inappropriate and, accordingly, will be rejected by the Commission.

37. Evaluation of bids

Evaluation of bids and establishment of the winning bid shall be carried out by the Commission, taking into account entering the period of validity of the bids and requirements specified in the bid book and informative notice.

If the awarding of the for public-private partnership contract is made on the basis of the criterion "the lowest price", the evaluation of bids shall be carried out by comparing the price of each bid and by drawing up, in descending order of prices and of their classification under which, after granting the internal margin of preference, the winning bid is established.

If the awarding of the contract for public-private partnership is made on the basis of the criterion "most economically advantageous bid", the evaluation of bids is achieved by giving each a score. Public partner must draw up, in the descending order of granted score and ranking on the bases of which, after granting the margin of preference, is established the winning bid.

Prices that are compared, for drawing up the ranking, are total prices offered for the work execution/services provision, excluding VAT.

If the prices quoted are equal, the Commission will award the public-private partnership contract to the bidder who offered the lowest price and has higher minimum

criteria for qualifications.

In the case when the criterion for evaluation is the "most economically advantageous bid", the elements of the technical bid shall be submitted in detail and fully in connection with evaluation factors described by the algorithm for calculation.

The Commission will evaluate and compare the bids only determined as appropriate, taking into account the evaluation factors set out in the bid book.

The Commission will establish the bidder with the most economically advantageous bid and which, in the result of evaluation has shown that it is able to carry out satisfactorily the requirements of public-private partnership contract.

The determination will be based on an examination of the supporting documents relating to the qualifications of the bidder, submitted by the bidder in his offer, as well as other information, such as the plan for production of the bidder, technical servicing and operation instructions, etc., if the Commission deems necessary and appropriate.

CHAPTER VIII

AWARDING THE PUBLIC-PRIVATE PARTNERSHIP CONTRACT

38. Notification on the outcome of the competition for the private partner selection

Before expiry of the period of validity of the bid, the public partner shall inform the winning bidder via fax and/or email, confirmed by letter of notification that his bid has been declared winner.

Notification on the designation of the winner will be a basis for further negotiation and signing of the contract for public-private partnership.

Public partner will notify all bidders on the outcome of the proceedings not later than 3 days from the date of signing the public-private partnership contract in case of rejection of all bids within 3 days from the date of signing the minutes of the meeting of the Commission.

Public partner has the right not to provide certain information relating to the awarding of the public-private partnership contract that could be contained in all of the information the public partner must provide, namely in a situation in which this provision would damage:

- a) the trading interests of bidders, including those of the bidder whose offer was declared winner; or
- b) fair competition between bidders.

39. Conclusion of the contract of public-private partnership

Public partner is obliged to conclude the contract for public-private partnership with the bidder whose bid was established as the winner by the Commission. The price stipulated in the offer which has been established as the winner is firm, the bidder having no possibility to change the offer which will be an integral part of the for public-private partnership contract.

The draft of the contract shall be negotiated not more than thirty (30) calendar days from the date of receipt by the bidder designated as the winner. During the negotiation of the terms, in the contract may be placed, with the mutual agreement of the parties, additional conditions, which will not be able change the essential conditions laid down in the bid book and the bid winner.

If the public partner does not get to conclude the contract with the bidder whose offer

was established as the winner, the one has the right to request the bidder ranked on the second place, with a view to the conclusion of the contract or to cancel the competition procedure.

40. Performance bond (bank guarantee)

From the date of signing the contract for public-private partnership, the private partner is obliged to submit to the public partner the performance bond of the contract in the form of the **Standard Form 13** attached to this instruction.

The performance bond is required to protect the public partner against the risk of fail to execute the conditions and terms for performance of the public private partnership contract.

The period of validity of contract performance bond must be at least equal to the duration of the contract.

Bank comfort letter:

- shall be presented in the original and in translation, certified in the state language;

Bid bond submitted by the bidder nominated as winner will be reimbursed within 10 days upon completion of the **Standard Form (14)** attached to this instruction.

Public partner may request the extension of the period of validity of the offer. In the case when the bidder extends the period of validity of the bid , the period of validity of the bid bond will be extended accordingly.

In the event that the bidder refuses the extension of validity, the one will be excluded from the proceeding.

41. Absence/Non-payment of bond bid within the deadline for their submission leads to rejection of the offer.

The bid bond will be forfeited if a bidder withdraws his bid during the period of validity of the offer or invalidates ones offer:

In the case of the winning bidder, the bid bond will be forfeited if the bidder:

(a) does not sign the contract for public-private partnership in terms laid down;

(b) does not submit the performance bond in terms of the contract settled; or does not support, or refuses to accept the correction of errors discovered in the bid.

The bid bonds shall be returned to the unsuccessful bidders within 5 calendar days from the date when they were informed about the results of the competition. Participation fees will not be refunded. The bid bond shall be returned to the winning bidder within 10 calendar days from the date of submitting the Bank Guarantee.

42. Publication of the results of the awarding procedure

The Commission shall publish in the Monitorul Oficial al Republicii Moldova an informative notice on nomination of the winner of the competition and the competition totals within 5 calendar days from the date the contract is signed .

Annex to
Instructions concerning the performance of procedures for awarding
public-private partnership contracts

Standard Forms
Standard form (1)

Economic operator,

(title/name)

STATEMENT

Non-inclusion within the circumstances determining the exclusion from the awarding procedure

1. The Undersigned (first and last name of the bidder), authorized representative of, declare on my own responsibility, as a bidder in the procedure for the awarding of the public-private partnership contract having as object (*the object name of the contract*), subject to the penalties imposed in the event of forged public documents, that we are **NOT** in any of the following situations:

a) we are in the process of liquidation or insolvency, our property has been seized or our activities are suspended

b) we have fulfilled the obligations to pay taxes, charges and social security contributions to the state budget, local budgets and the budget of the state social insurance, in accordance with the legal provisions in force in the Republic of Moldova, or in the country in which one is established;

c) we have within the management, persons who have been convicted over the past 3 years, by final court decision, for an act concerning professional ethics or for committing a professional mistake, liable to affect the future performance of the contract;

d) over the past 2 years we have not met or we have inappropriately fulfilled the contractual obligations for reasons attributable to us, a fact that has emerged or is likely to cause serious injury to the beneficiaries of such contracts;

e) we are included in the list of banned economic operators;

f) we provide false information in the documents submitted.

2. I, the undersigned, declare, at my own risk that in the past 5 years, I have not been convicted by a final judgment of a court, for participation in the activities of a criminal organisation, for corruption, fraud and/or money laundering.

3. Moreover, I certify that none of the subcontractors appointed within the framework of the offer is found in any of the situations mentioned above, which determines the exclusion from the awarding procedure.

4. I, the undersigned, certify that the information provided is complete and correct in every detail and understand that the public partner shall have the right to request, in order to verify and confirm the declarations, statements and documents within the bid, any

additional information about our eligibility, and the experience, proficiency and resources that we have.

5. I, the undersigned, hereby authorize any institution, company, bank, other legal persons to provide information to the authorized representatives of the public partner, on any technical and financial aspect in connection with our activity.

6. I understand that if this statement is not consistent with the facts, I am liable for breaching the provisions of the criminal law relating to misrepresentation.

Date :[DD.MM.YYYY]

(name and surname)

(signature and stamp), as _____, legally authorized to sign the bid for and on behalf of (title/name of the economic operator)

Standard form (2)

[Header of the bidder, or the main project partner of a joint enterprise, including full postal address, telephone number, fax number, telex and telegraphic address]

**APPLICATION
for participation in the competition for the selection of the private partner, if
appropriate prequalification /competitive dialogue**

A. CURRENT DATA ABOUT THE BIDDER-LEGAL PERSON:

- Name _____
- Legal representative: _____
- Office: _____
- _____
- Telephone, fax, e-mail: _____
- www: _____
- Contact person: _____
- Current activity profile: _____
- _____
- _____
- Annual turnover (last 3 years): _____
- Total number of employees: _____

B. CURRENT DATA ABOUT THE BIDDER –NATURAL PERSON:

- Name,surname: _____
- Residence: _____
- _____
- Telephone, fax, e-mail: _____
- _____
- Work experience: _____
- _____

C. I am aware of the Informative Notice concerning

and I accept the conditions of the competition conduct, published in the Official Gazette no. __ of _____

D. This application is accompanied by the sealed package in accordance with the requirements set out in the bid, which contains:

1. the bid
2. the documents that accompany the bid

Participant _____
(participant's signature)

F. The application is taken up by the Commission for private partner selection
Secretary _____
name, surname (signature)

The participant is registered in the Register of the Commission for private partner selection under the number _____

Standard Form (3)

STATEMENT ON BID CONFIRMATION

To _____ (name of public partner, address) _____

Dear Sirs,

Having examined the standard documentation for the preparation and submission of bid, the undersigned,

Representatives of bidder _____ (name, bidder's name)

We would like, in accordance with the provisions and requirements set out in the above mentioned standard documentation, to execute

(name of work/service performed)

We are committed to keep the bid valid for a period of _____ days, until the date of _____, and it shall remain mandatory for us and may be accepted at any time before the expiry of the period of validity.

If our offer will be accepted, we assume responsibility for concluding the contract for public-private partnership, based on the draft, not for more than 30 days from the date of its receipt.

We agree that in the event of any particular provision of our bid does not comply with terms and conditions of the standard documentation, such provisions are hereby excluded.

We are aware of and liable for covering all costs relating to the preparation and submission process of the bid, regardless of the outcome of the competition for the awarding of the public-private partnership contract.

We understand that you are not obliged to accept the bid with the lowest price or any other bid you can receive,

Date _____/_____/_____
_____, as _____, legally authorized to sign the bid for and on
behalf of _____
(name of bidder)

Standard Form (4)

POWER OF ATTORNEY

Power of Attorney for the submission of the bid for the public-private partnership project
[the title of the public-private partnership project]

We, *[name of the Bidder and legal address]*, hereby empower: *[name and address of the person signing on behalf of the Bidder, if the Bidder is a single entity, or in the name of the leader member, if the Bidder is an Association]*, citizen *[nationality]* born on *[date]* and holder of *[type and details of identity card: Passport, etc.]*, which is currently resident in *[place of residence]* currently being employed by us as *[that person's function in the company]*,

as our legal representative ("**Representative**"), to conduct from and on our behalf the activities, tasks and actions necessary or required in connection with the submission of our bid for the project mentioned above, according to the Informative Notice published by *[public partner]*,

Not being limited to signing and submission of the bid and any other document or act, attending meetings and providing information/answers to the public partner, representing us in all matters, including the signing of the contract for public-private partnership.

We hereby confirm that all the actions, tasks, and things legally achieved or caused by our Representative, referred to above, in accordance with the powers conferred by this power of attorney or to its implementation, they shall be deemed to be made by us.

Power of Attorney is valid for _____ year(s) and will become invalid, if the bid submitted is rejected.

power of attorney dated ____ of month _____ year, _____.

(seal/Signature)

STANDARD FORM (5)

Involvement in legal proceedings (litigation)

 Name of bidder or partner of association

Bidders, including each of the partners in a partnership, should provide information with regard to any involvement in legal proceedings (litigation) or arbitration arising from contracts executed in the past five years or currently in execution. For each partner in a partnership must be filled a separate sheet.

<i>Lawsuit FOR/ AGAINST bidder</i>	<i>Name of client, the cause of the litigation, and the question in dispute The object of the litigation</i>	<i>The controversial amount (the current value, euro equivalent)</i>

STANDARD FORM (6)

Information regarding overall experience

 Name of bidder

All bidders are to fill in the information in this form. The information provided must contain the annual turnover of the Bidder (or of each Member of an Association), converted into euro, at the exchange rate from the end of the reporting period.

Each member of an association shall submit the information separately.

Bidders shall not include recommendations, certificates and advertising material with their applications.

<i>Annual turnover data</i>		
<i>Year</i>	<i>Turnover</i>	<i>Equivalent in Euro</i>
1.		
2.		
3.		
4.		
5.		

STANDARD FORM (6A)

Summary data of Association

<i>Name of partners, Associate</i>
1. Major project associate (Leader)
2. Associate
3. Associate
4. Associate
5.
6.

The total amount of turnover, equivalent in euro, converted at the exchange rate at the end of the period reported:

<i>Data on annual turnover (only in construction; equivalent in euro)</i>						
<i>Partner</i>	<i>Formula page no.</i>	year 1	year 2	year 3	year 4	year 5
1. Leader						
2. Associate						
3. Associate						
4. Associate						
5.						
6.						
<i>Totals</i>						

Bidders of the partnership will attach to this form the following details of the arrangement of Association, and an official commitment (signed by each member of the partnership) that, in the case when the Association will be awarded the contract for public-private partnership, the partnership agreement will come into force before the signing of a project contract:

- a) capital contribution;

- b) financial commitment in terms of a percentage of the value of the contract;
- c) responsibilities for the execution of the contract.
- d) risk sharing.

STANDARD FORM (7)

Information regarding similar experience

 Name of bidder

The bidder must comply with the requirements specified in this form, as prescribed in the specification.

On a separate page, using the format of the Standard form (7A), the bidder is required to enumerate all contracts, with an initial investment requirement equivalent to _____, similar in nature and complexity with the contract for which the bidder desires to be selected, and carried out in the past 5 (five) years.

In the case when the bidder proposes to use subcontractors appointed for the critical components in the implementation of the project, for example, in the construction and operation of the facility, moreover, it should be provided for each subcontractor for implementation of the project also the following information in accordance with the form (7A).

STANDARD FORM (7A)

Details for Contracts of similar nature and complexity

 Name of bidder or partner

Use a separate sheet for each contractor.

1.	Number of contract	
	Title of contract	
	Country	
2.	Office of Contractor	
3.	The nature of investment and special features corresponding to the contract.	
4.	Function within contract (select one)	
	<input type="checkbox"/> Single Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Prime Contractor	
	<input type="checkbox"/> Partner in a Partnership	
5.	The total value of the contract/subcontract/partner share	

6.	Euro equivalent Value
7.	Date of awarding
8.	Date of completion
9.	Duration of the contract/of subcontract (years and months) ___ years ___ months
10.	Specified Requirements

STANDARD FORM (8)

Staff qualifications

Name of bidder

*For the positions **essential** to implement the contract, the bidders must provide the names of at least two qualified bidders to meet the specified laid down for each position. The data relating to their experience, must be submitted on separate sheets, using a Form (8A) for each bidder.*

1	Name of position
	Name of prime bidder
	Name of alternative bidder
2.	Title of position –
	Name of prime bidder
	Name of alternative bidder
3.	Title of position –
	Name of prime bidder
	Name of alternative bidder
4.	Title of position -
	Name of prime bidder
	Name of alternative bidder

STANDARD FORM (8A)

Summary data regarding the bidder

Name of bidder	
Position	Bidder <input type="checkbox"/> Prime <input type="checkbox"/> Alternative
<i>Information Concerning the bidder</i>	1. Name of bidder
	2. Date of birth

	3. Professional qualification	
Currently employed	4. Name of employer	
	Address of employer	
	Telephone	Contact (manager / human resource manager)
	Fax	Telex
	Title of bidder's position	Years spent with the current Employer

Summarize the professional experience over the last 20 years, in reverse chronological order. Point a specific technical and managerial experience corresponding to the Project.

<i>From</i>	<i>Till</i>	<i>Company / Project / Position / Proper specific technical and managerial experience</i>

Standard form (9)

[Letterhead of the Bank, including full postal address, telephone number, fax number, telex and telegraphic address]

BANK COMFORT LETTER

For participation in the public-private partnership project

To _____ (name of public partner)_____

On the selection of the private partner _____(title of the public-private partnership project),

the undersigned _____ (name of bank) _____,

having the office registered at _____(bank address)

_____ ,

we oblige ourselves towards _____(name of the bidder)_____ to pay the amount of _____(amount in letters and figures)_____, at his first written request and without it being required to motivate such a request, provided that in his request the public partner shall specify that the amount claimed and owed is because of the existence of one or more of the following situations:

- a) the bidder _____(title /name) _____ withdraws or amends the offer during its period of validity;
- b) his bid being established the winner, the bidder _____(title /name) did not make the performance bond during the period of validity of the bid;
- c) his bid being established the winner, the bidder _____(title /name) refused to sign the contract for public-private partnership during the period of validity of the bid;
- d) the bidder _____(title/name) _____ does not accept the rectification, arithmetic mistakes corrections:

e) no performance of any condition, specified in the standard documents before signing the public-private partnership contract.

This bond is valid until _____ it shall be indicated the period of validity of the bid) _____

Initialed by the Bank _____

(sealed/authorized signature)

on day _____ month _____ year _____

STANDARD FORM (10)

Financial capacity

Name of bidder or Partner

Assets and liabilities will be summarized in euros at the current exchange rate at the end of each year for the past five years. On the basis of known commitments, the assets and liabilities planned in euros for the next two years shall be summarized,.

<i>Financial information in euro equivalent</i>	<i>Current: For the past five years</i>					<i>Projected: For the next two years</i>	
	1.	2.	3.	4.	5.	6.	7.
<i>1. Total assets</i>							
<i>2. Current assets</i>							
<i>3. Total liabilities</i>							
<i>4. Current assets</i>							
<i>5. Pretax profit</i>							
<i>6. Profit after tax</i>							

Specify the project funding sources.

<i>Funding sources</i>	<i>Amount (euro equivalent)</i>
1.	
2.	
3.	
4.	

Attach the financial statements for the last five years (for individual Applicant or each member of an Association).

Firms owned by natural persons, and partner, may submit the balance sheets certified by a registered accountant and having as a base the copies of tax returns, in the case when balance sheets auditing are not required by the laws of their home countries.

Standard Form (11)

Details on financial bid

Name of bidder

Minimum requirements in terms of content

Standard forms of the Financial Bid shall be used as follows:

- 1) FIN-1 :** Details on price categories and activities
- 2) FIN-2 :** Schedule of payments
- 3) FIN-3 :** Commitments regarding commercial conditions

FIN-1 : Details on price categories and activities – as submitted by the Bidder in the Technical Bid

Each activity described in the Technical Bid shall have an equivalent in the Financial Bid

Nr.	Package of Activities	Method of acceptance/ receipt	Amount	Unit price	Price per activity (package of activities)
1	<i>Introduce the title of the package of activities</i>				
1.1.	<i>Introduce the activity</i>				
2					
	Total of financial bid, no VAT				
	Value Added Tax (VAT)				
	Total price of bid				

FIN-2 : Schedule for service provision/ work execution can be done in correlation with the control key points, identified, submitted according to the following model:

		Month	Month				Total per activity
1	Activity							
	Result (*)							
	Price							
2	Activity							
	Result(*)							
	Price							
.....							
n	Activity							
	Result(*)							
	Price							

(*)By result it is meant: the intermediate or final result for the activities carried out under the contract.

FIN-3 : Commitments on conditions of trade

Standard form (12)

Statement of impartiality and confidentiality ¹

I, the undersigned _____
 (indicate the name and surname , position held)

I declare that I will carry out my responsibilities in an honest and fair manner in the process of analysis of the bids and the competition documents within the Public-Private Partnership Project
 ”_____”.

I am independent from all parties which intend to benefit from the result of the assessment. In the fullness of my skills and belief, there are no facts or circumstances, from past or present, or which may arise in the foreseeable future, or to put in question my independence in the eyes of any party. If during the analysis of competition documents, it will become obvious that such a relationship exists, or has been determined, I will immediately cease to participate in the analysis process.

I agree to keep confidential any information or documents ("confidential information") that is shared to me or I will discover or which I will prepare during or after analysis and I agree that they will be used only for the purposes of this review and will not be disclosed to any third parties. Moreover, I agree not to retain copies of any written information, or of any prototype provided.

Confidential information shall not be disclosed to any employee that is not involved within the process of analysis and implementation of Public-Private Partnership Project

name	
signature	
date	

¹ Shall be completed by all persons involved in a process of evaluation (including members of the competition Commission, with or without the right to vote, and any observers/co-opted experts)

² Taking in to consideration whether there is a past or present relationship, direct or indirect, whether financial, professional, or another kind

³ All bidders taking part in the selection of bids, either individually or as members of a consortium, or any of the partners or subcontractors proposed by them

Standard Form (13)

[The letterheader of the Bank, including full postal address, telephone number, fax number, telex and telegraphic address]

Contract performance bond

To _____

(name of public partner and full address)

With regard to the contract of public-private partnership: _____(title of contract ____, concluded

between _____

_____, as private partner, and _____, as private partner, we hereby oblige ourselves to pay in favour of public partner, up to an amount of _____, representing _____% of the value of the contract, and any amount claimed by him/her on his/her first application accompanied by a declaration of failure to fulfill the obligations incumbent upon the private partner, as laid down in the contract for public-private partnership mentioned above.

Payment shall be performed within the time limit stated in the request, without any further formality on the part of the public partner or private partner.

This guarantee is valid until the date of _____
(data in figures and letters)

If the Contracting Parties agree to extend the period of validity of the guarantee or amend some of the provisions of the contract, which have an effect on the Bank's commitment, otherwise, this bank comfort letter becomes invalid.

Initialed by the Bank _____

(authorized signature)

On the day _____ month _____ year _____

Standard Form (14)

BIDDER _____

To: _____

APPLICATION

Bid bond refund

I, the undersigned _____ headquartered in _____, hereby request refund of the bid bond, amounting to _____, provided for participation in the competition for the private partner selection within the public-private partnership project _____

Initiated by _____ informative notice published in Official Gazette No. _____ of _____.

Payment order No. _____

Receipt No. _____

Refund of bid bond shall be made on behalf of the company, _____ (the Bank requisites shall be indicated to which the transfer will be performed) _____

Date of completion: _____

(Name, surname)

(Position held)

(Authorized signature and seal)

Standard Documentation (15)

Preliminary technical bid

Name of bidder or Leader of an Association

economic operators must also include the preliminary technical bid, a document by which the bidder proves in the first stage of the procedure the fact that understands the context in which the object of the contract is included resulting from the conduct of the competitive dialogue procedure and, also, offers preliminary (General) solutions that meet the needs and constraints of Public Partner, as they were presented by descriptive documentation.

Standard documentation (16)

Name of bidder

ADDITIONAL INFORMATION

The bidder may submit any additional information to supplement the compliance of his/her bid with the competition documentation. Any additional documents shall be only for information purposes. They are not part of the bid, and will not be taken into account during the evaluation of bids.