

Pursuant to Article 37 (1) (f) of the Constitution of Zenica-Doboj Canton, at their 29<sup>th</sup> session held June 28, 2016, the Zenica-Doboj Canton Assembly have adopted the:

**LAW  
ON PUBLIC-PRIVATE PARTNERSHIP<sup>1</sup>**

**PART I – GENERAL PROVISIONS**

**Article 1  
(Subject)**

- (1) This Law shall regulate the subject, principles and properties of public-private partnerships (hereinafter: PPP), PPP models, the procedures for approving PPP projects and for selecting private sector partners, the rights and obligations of both public and private partners, implementation oversight, and other matters of relevance to public-private partnerships falling within the competence of the Zenica-Doboj Canton (hereinafter: the Canton) and the local self-government units (cities/municipalities, hereinafter: LSGUs) in the Canton area.
- (2) For all matters not regulated by this Law, special laws shall apply, pending on the type of service subject to public-private partnership.

**Article 2  
(Terminology grammar)**

The terms in this Law that are marked for grammatical person or gender shall be applicable to both men and women regardless of whether the feminine or masculine gender version is used.

**Article 3  
(Purpose)**

This Law is meant to provide a clear, non-discriminatory and effective legislative framework for the implementation of PPP projects used to improve, through private partner participation, the standard of public services falling within the competence of the Canton and its LSGUs, as well as to create the preconditions for further economic growth and development in the Canton and in the area of the Canton LSGUs.

**Article 4  
(Definitions)**

For the purposes of this Law, the following terms shall have the following meanings:

- a) A *public-private partnership* is a long-term contractual relationship between a public and a private partner aimed to provide the public services falling within the competence of the public partner through the use of the management, technical, financial and innovation

---

<sup>1</sup> UNOFFICIAL TRANSLATION Law on Public Private Partnership Ze-Do Canton Official Gazette 6/16

capacities of the private partner, as well as through the exchange of skills and knowledge between the public and private partners, in line with this Law.

- b) A *PPP project* is a group of activities initiated, prepared, contracted, and implemented in a manner provided for by this Law.
- c) A *public partner* is any administrative or government body of the Canton or of its local self-government units, public institution or a public company having the Canton or a Canton LSGU as its founder and majority owner, which is responsible for the provision of the given public service and has concluded a PPP contract with a private partner.
- d) A *private partner* is one or more national and/or foreign legal entities selected by means of the procedure regulated by this Law and with which a public partner has concluded a PPP contract.
- e) A *PPP contract* is a core contract concluded between a public and private partner providing for the rights and obligations of the parties in relation to the implementation of a specific PPP project.
- f) A *consultant* is one and/or more natural persons and/or legal entities with specialised knowledge required for the preparation, contracting and implementation of a PPP project.

#### **Article 5**

##### **(Subject of public-private partnership)**

- (1) The subject of public-private partnership shall be researching (exploration), designing, construction, reconstruction, operation and maintenance of public resources for the fulfilment of public needs falling within the competence of the public partner.
- (2) The subject of public-private partnership shall not exclusively be research (exploration), construction, delivery of goods or provision of public services nor exclusively a concession for the use of common or another goods for commercial activities.

#### **Article 6**

##### **(Main PPP properties)**

The main PPP properties shall include:

- a) A private partner may take over from the public partner the obligations related to researching, designing, construction and/or reconstruction of public infrastructure and/or to the buildings of public interest, and with them the funding, operation and maintenance obligations, for the purpose of providing the public services falling within the competence of the public partner to the final beneficiaries or the purpose of ensuring the necessary preconditions for the public partner to provide the public services falling within their competence;
- b) For the purposes of implementing a PPP contract, the public partner shall grant the construction right and/or a concession and/or pay a cash consideration (fee) to the private partner;

- c) In accordance with the purpose of a PPP project, the public partner may allow the performance of commercial activities with the aim of collecting revenue from third persons on the market. If not contracted, such commercial activities shall not be permitted.
- d) The public partner may grant the construction right to the private partner free of any consideration (fee), and all matters pertaining to the transfer of the construction right, including the amount of consideration, shall be regulated by the public and private partner in the public-private partnership contract.
- e) Each partner shall be responsible for the risks that they are more suited to efficiently manage or the partners shall share that responsibility, which must be defined in detail by the PPP contract;
- f) A private partner shall take over from the public partner the obligations and risks related to funding and the construction, and at least one (1) of the two key risks – the availability risk or the demand risk;
- g) PPP contracts may not serve as grounds for change of legal title over the existing or future public or common assets, i.e. all public assets shall remain publicly owned beyond the expiry of the PPP contract.

#### **Article 7 (Principles)**

All public-private partnerships shall be exercised in accordance with the principles of protection of public interest, equal treatment (equality), transparency, competitiveness, and cost efficiency.

#### **Article 8 (Public-private partnership models)**

A public-private partnership in the meaning of this law shall be exercised based on one of the following models:

- a) The **basic model**, as a model having the construction right as its legal grounds and wherein the payment of consideration (fee) to the private partner is made, mostly or entirely, from the budgetary funds based on the availability of the public service in line with the contracted standards;
- b) The **special model**, as a model having a concession as its legal grounds and wherein the payment of consideration (fee) to the private partner is made, mostly or entirely, from the fees collected from the final beneficiaries, based on the use of the public service in line with the contracted standards.

#### **Article 9 (Responsibility for PPP projects)**

- (1) The procedures for the award, implementation and implementation oversight of PPP contracts shall be carried out by the public partner referred to by Article 4 (1) (c) of this Law.

- (2) The public partner shall submit the Report on the PPP contract implementation oversight for the previous calendar year to the Ministry of Economy for the purposes of maintaining the Register and preparing annual reports on the implementation of the Law, no later than by March 30.

## **PART II – AWARDING PUBLIC-PRIVATE PARTNERSHIP CONTRACTS**

### **Article 10 (PPP contract awarding procedure)**

The procedure of awarding a PPP contract shall include the following stages:

- a) Identification of a PPP project;
- b) Preparation of the PPP project proposal;
- c) Selection of the private partner;
- d) Negotiating and concluding the PPP contract.

### **Article 11 (Identification of a PPP project)**

- (1) A public partner must prepare a medium-term (three-year) and an annual plan of potential PPP projects in a manner regulated by this Law.
- (2) The medium-term plan shall list all priority public services to be improved over the planning period, the funds required for the implementation of the plan, the expected results in the meaning of contribution to the implementation of the relevant strategic documents, risk assessment, and a project pipeline (including the name, short description, purpose, specific objectives and estimated value of the projects, and the expected PPP model).
- (3) The annual plan must be harmonised with the medium-term plan and include:
  - a. A pipeline of PPP projects to be implemented over the planning period (including the name, short description, purpose, specific objectives and estimated value of the projects, and the expected PPP model);
  - b. Short description of PPP projects, using a template required under the relevant bylaw;
  - c. Planned budget for the implementation of the plan, broken down by individual activities.
- (4) The annual plan of PPP projects shall be prepared, adopted and published in parallel to the budget of the given public body.
- (5) Following the adoption of the plans referred to by paragraph (1) of this Article, the public partner shall publish them on its web site and deliver to the Ministry of Economy, which is responsible for the administrative oversight.
- (6) Identification of potential PPP projects shall be done in line with the strategic documents of the public partner and the criteria envisaged by the relevant bylaw.
- (7) The Canton Government shall pass a Regulation laying down the details of the template for submission of short descriptions of PPP projects, the procedure and the criteria for the selection of the working bodies and the consultants, minimum required feasibility study contents,

additional contents of the PPP contracts, the process of registering PPP contracts, and other matters having to do with the implementation of this Law.

**Article 12**  
**(Preparation of a PPP project proposal)**

- (1) Preparation of a PPP project proposal shall include:
  - a) Establishment of the working body;
  - b) Development of the work plan, with timetable;
  - c) Project terms of reference;
  - d) Development of the conceptual project design and/or the preliminary project design, pending on its complexity;
  - e) Development of a feasibility study;
  - f) Adoption of the final decision on the project (accepting or rejecting the project).
- (2) The public partner shall submit the project proposal (terms of reference and feasibility study) to the body responsible for the adoption of the Decision on the Establishing of the PPP.
- (3) The public partner shall deliver the Decision on the Establishing of the PPP to the Ministry of Economy within seven (7) days as of the date of its adoption.

**Article 13**  
**(Working body for the preparation of a PPP project)**

- (1) For each PPP project, the public partner shall establish a working body to prepare the project and conduct the PPP contract award procedure.
- (2) The working bodies referred to by paragraph (1) of this Article for all PPP projects falling within the competence of the Canton shall be appointed by the Canton Government and for all PPP project falling within the competence of the LSGUs they shall be appointed by the Mayor of the respective LSGU.
- (3) The public partner may appoint a consultant referred to by Article 4 (1) (f) of this Law to the working body, provided that the consultant does not have a conflict of interest in relation to the private partner.
- (4) The procedure and the criteria for the selection of the members of the working bodies and of the consultants, their rights and obligations, shall be provided for by the Regulation referred to by Article 11 (7) adopted by the Canton Government.

**Article 14**  
**(Work plan with timetable)**

The working body shall develop a plan for the preparation of the PPP project proposal, with a timetable, using the template the contents and the format of which would be defined by the Regulation referred to by Article 11 (7).

**Article 15**

### **(Project terms of reference)**

The working body shall prepare the PPP project terms of reference, using the template the contents and the format of which would be defined by the Regulation referred to by Article 11 (7).

### **Article 16 (Conceptual project design and/or preliminary project design)**

Conceptual and preliminary project designs shall be developed in accordance with the law.

### **Article 17 (Feasibility study)**

- (1) The public partner shall prepare a feasibility study the minimum contents of which would be defined by the Regulation referred to by Article 11 (7).
- (2) The public partner shall prepare a feasibility study on their own or with the assistance of consultants, pending on the capacities of the public partner.
- (3) The public partner shall select the consultants through an open competition.
- (4) The criteria and the procedure for the selection of consultants shall be defined by the Regulation referred to by Article 11 (7).

### **Article 18 (Private sector participation in the preparation of project proposals)**

- (1) Following the publication of the medium-term and the annual plan of PPP projects, the public partner may agree, upon a written request of an interested private partner, to allow the private partner to prepare a part of a specific PPP project (conceptual project design and the feasibility study) in a manner defined by this Law and the Regulation referred to by Article 11 (7).
- (2) In the event that, following the completion of the procedure for the selection of private partner, the private partner referred to by paragraph (1) of this Article does not get selected, they would be entitled to a refund from the selected private partner for the costs of procuring the project documentation.
- (3) Mutual rights and obligations, as well as the price of the project documentation referred to by paragraphs (1) and (2) of this Article shall be regulated by a contract between the public partner and the interested private partner.
- (4) In the event that several different private partners show interest in preparing a specific project proposal, the first private partner to submit the request referred to by paragraph (1) of this Article shall be given an advantage in terms of conclusion of the contract.

### **Article 19**

### **(Selection of the private partner)**

- (1) The public partner shall pass a Decision on the selection of the private partner based on an open competition procedure.
- (2) The criteria and the procedure for the selection of private partner shall be defined by the Regulation referred to by Article 11 (7).
- (3) The public partner shall deliver the Decision on the selection of the private partner to the Canton Ministry of Economy within no later than seven (7) days as of the date of its adoption.

### **Article 20 (Negotiating and concluding a PPP contract)**

- (1) When required and pending on the type of project, the public partner shall complement the composition of the working body referred to by Article 13 (1) with the resources needed to carry out the procedure of negotiating and concluding the PPP contract.
- (2) The procedure of negotiating and concluding the PPP contract with the selected private partner shall comprise three (3) stages:
  - a) Preparation of a draft PPP contract;
  - b) Negotiating on the elements of the draft PPP contract;
  - c) Concluding the PPP contract.

### **Article 21 (Draft PPP contract)**

- (1) The working body shall prepare a draft PPP contract based on the PPP project proposal referred to by Article 12 of this Law.
- (2) A draft PPP contract must include:
  - a) Introduction;
  - b) The contracting parties;
  - c) Definitions;
  - d) The purpose and subject of the agreement, i.e. the set standard of the public service;
  - e) The period for which the agreement is concluded;
  - f) Property rights and obligations of the contracting parties;
  - g) Division of risks and the related costs between the contracting parties;
  - h) Project funding;
  - i) Payments by contracting parties;
  - j) Financial guarantees for the fulfilment of the agreement;
  - k) Financial guarantees for the fulfilment of the sub-contractor obligations;
  - l) Potentially damaging events and the conduct of the contracting parties in relation to any such events, including force majeure;
  - m) Default interests;
  - n) Insurance policies;
  - o) The consequences of violations of the contractual obligations;
  - p) The right to oversight by the public partner;
  - r) Subsequent inability to implement the agreement;

- s) Conditions and the procedure for takeover of any buildings constructed under the PPP contract;
  - t) Expiry of the agreement;
  - u) Termination and consequences of premature termination of the agreement;
  - v) Environmental impact;
  - z) Sending notifications during the period of the agreement;
  - aa) Protection of copy rights, business secrets and data confidentiality;
  - ab) Sub-contracting;
  - ac) Dispute resolution;
  - ad) Severability clause;
  - ae) Entry into force;
  - af) Other rights, obligations and responsibilities of the contracting parties.
- (3) Any additional required content of PPP contracts shall be defined by the Regulation referred to by Article 11 (7).
- (4) For all matters not specifically regulated under paragraph (2) of this Article, provisions of the Law on Obligations shall apply.

**Article 22**  
**(Negotiating on the elements of a draft PPP contract)**

- (1) Within fifteen (15) days as of the date of adoption of the Decision on the selection of the private partner, the public partner shall provide the private partner with a draft PPP contract.
- (2) The private partner shall provide a written response to the draft PPP contract within thirty (30) days as of the date of receipt of the contract.
- (3) Pending on the response of the private partner, the contracting parties may continue negotiating on the contract until they reach a mutual understanding.
- (4) The negotiations referred to by paragraph (3) of this Article may not last longer than sixty (60) days as of the date of the receipt.
- (5) In the event of failure to reach an understanding with the selected private partner, the public partner shall deliver the draft PPP contract referred to by Article 21 to the next-ranked private partner.

**Article 23**  
**(Concluding a PPP contract)**

- (1) The public partner shall submit the final text of a PPP contract and of any subsequent annexes to that contract to the Public Attorney's Office for their opinion.
- (2) The public partner must register a PPP contract and any subsequent annexes to that contract within three (3) days as of the date of their signature in a manner defined by the Regulation referred to by Article 11 (7).

**PART III – IMPLEMENTATION OF THE LAW**



**Article 24**  
**(Law implementation activities)**

The Ministry of Economy, responsible for the implementation of this Law, shall conduct the following tasks:

- a) Prepare and submit to the Government the annual plan of activities related to the implementation of the Law;
- b) Prepare and submit the annual report on the implementation of the Law;
- c) Establish and maintain a Register and ensures its availability to the public;
- d) Prepare and provide expert opinions on particular matters related to this Law and other regulations arising from this Law;
- e) Provide opinions on whether the initiatives to amend this Law and other public-private partnership regulations are justified or not;
- f) Organise, in cooperation with other relevant bodies, specialised training programmes for public services and other participants in the process;
- g) Cooperate with the science and research institutions, social partners, business and non-governmental associations and other stakeholders in the interest of improving the implementation of this Law;
- h) Promote and analyse the use of best PPP practices and, within its competence, cooperate with foreign and national bodies, as well as the international organisations and institutions dealing with PPP;
- i) Perform any other duties in line with the provisions of this Law.

**Article 25**  
**(Law implementation funding)**

The funding for the implementation of the activities referred to by Article 24 shall be built into the Canton budget as a separate budget line with the Ministry of Economy, in line with the budget plan for the current year.

**PART IV – LEGAL PROTECTION**

**Article 26**  
**(Legal protection related to the selection of private partners)**

- (1) Decision on the selection of the private partner may be appealed against within fifteen (15) days as of the date of its receipt.
- (2) For all PPP projects falling within the competence of the LSGUs the appeal shall be submitted to the Ministry of Economy, while for all PPP projects falling within the competence of the Canton the appeal shall be submitted to a second-instance Government committee.
- (3) The appeals procedure shall be conducted in accordance with the Law on Civil Procedure.

**Article 27**

### **(Competence-related disputes)**

In the event of competence-related disputes with regard to PPP projects between different public bodies, the Law on Civil Procedure shall apply.

## **PART V – PENALTY PROVISIONS**

### **Article 28 (Initiating misdemeanour proceeding)**

Should the Canton Ministry of Economy and/or another relevant public body determine that either a public or a private partner have breached the provisions of this Law, they shall submit a proposal to initiate misdemeanour proceedings to the relevant magistrates' court.

### **Article 29 (Fines)**

- (1) The public partner shall be liable to pay a fine in the amount between 5,000 and 15,000 convertible marks (BAM) for:
  - a) Failure to implement the PPP project preparation and contracting procedures in the manner defined by Articles 10 through 23 of this Law and the Regulation referred to by Article 11 (7).
  - b) Failure to deliver or to deliver in due time and in the set manner the documents referred to by Article 9 (2), Article 11 (4), Article 12 (3), Article 19 (3), Article 22 (1) and Article 23 (2).
- (2) The private partner shall be liable to pay a fine in the amount between 5,000 and 15,000 convertible marks (BAM) for failure to deliver or to deliver in due time and in the set manner the document referred to by Article 22 (2).
- (3) The responsible person of the public or private partner shall be liable to pay a fine in the amount between 1,000 and 3,000 BAM for the violations referred to by paragraphs (1) and (2) of this Article.

### **Article 30 (Anti-corruption measures)**

Any actions of public or private partners in the course of the PPP project preparation, contracting and/or implementation entailing criminal responsibility, in particular any abuse of office and offering or accepting bribes, shall be investigated and processed in accordance with the law.

## **PART VI – TRANSITIONAL AND FINAL PROVISIONS**

### **Article 31 (Adoption of bylaws and other regulations)**

- (1) No later than within thirty (30) days as of the date of entry into force of this Law, upon the proposal of the Ministry of Economy, the Canton Government and Assembly shall adopt the decisions enabling the Ministry of Economy to take the actions referred to by Article 25 of this Law.

- (2) No later than within thirty (30) days as of the date of adoption of the decisions referred to by paragraph (1) of this Article, i.e. ninety (90) days as of the date of entry into force of this Law, upon the proposal of the Ministry of Economy, the Government shall adopt the Regulation referred to by Article 11 (7) of the Law on Public-Private Partnership of the Zenica-Doboj Canton.
- (3) All public bodies in the Canton area, i.e. the public services and administrative organisations of the Canton and of the Canton LSGUs, public institutions and public companies having the Canton or a Canton LSGU as their founder and majority owner shall take actions referred to by Article 11 of this Law within sixty (60) days as of the date of adoption of the Regulation referred to by paragraph (2) of this Article.
- (4) The provisions of paragraph (3) of this Article shall be binding also to the public bodies not planning to implement any PPP projects over the course of next three (3) years.
- (5) The Ministry shall adopt the Rulebook on the establishing and maintenance of the Register referred to by Article 24 of this Law within thirty (30) days as of the date of entry into force of this Law.

**Article 32**  
**(Application of the Law on the ongoing proceedings)**

Any proceedings on which the final decision has not been made prior to entry into force of this Law shall be completed in accordance with the law that has been valid at the time of their initiation.

**Article 33**  
**(Repeal)**

As of the date of entry into force of this Law, the Law on Public-Private Partnership ("Zenica-Doboj Canton Official Gazette," No. 5/13) shall become null and void.

**Article 34**  
**(Entry into force)**

This Law shall enter into force eight (8) days as of the date of its publication in the "Zenica-Doboj Canton Official Gazette."

Number: 01-02-12203/16  
Date: June 28, 2016  
Z e n i c a

**CHAIR**  
**Drazenka Subasic**