

G O V E R N M E N T

Pursuant to Article 16 (1) of the Law on Zenica-Doboj Canton Government – consolidated text (“Zenica-Doboj Canton Official Gazette,” No. 7/10) and Article 11 (7) of the Law on Public-Private Partnership (“Zenica-Doboj Canton Official Gazette,” No. 6/16), as proposed by the Ministry of Economy, the Government of Zenica-Doboj Canton, at their 90th session held on 9 March, 2017, have adopted the

R E G U L A T I O N **ON IDENTIFICATION, PREPARATION, CONTRACTING AND MONITORING** **OF PUBLIC-PRIVATE PARTNERSHIP PROJECTS¹**

SECTION I – GENERAL PROVISIONS

Article 1 **(Subject)**

Regulation on Identification, Preparation, Contracting and Monitoring of Public-Private Partnership Projects (hereinafter: the Regulation) provides for the procedures and relations pertaining to implementation of the Law on Public-Private Partnership (“Zenica-Doboj Canton Official Gazette,” No. 6/16; hereinafter: the PPP Law).

Article 2 **(Definitions)**

(1) For the purposes of this Regulation, the following terms shall have the following meanings:

- a) “The most economically advantageous tender” is the tender wherein other elements in addition to financial are considered. The public partner shall define and elaborate on the award sub-criteria and the sub-criteria weighting methodology, taking into account the nature and purpose of each PPP project separately.
- b) “Output specifications” are the main element of a potential PPP project. They shall be defined based on the analysis of at least four (4) public service features (physical availability, affordability, adaptability, and quality) and set the expected public service standard in both qualitative and quantitative terms;
- c) “Research” is the research conducted to obtain specific technical information on a natural resource pending on the type of project that are required to prepare a feasibility study of public-private partnership (hereinafter: PPP) for the project;
- d) “PPP project pipeline” is the overview of all projects included in the public partner's medium-term and annual plans of potential PPP projects;
- e) “Public sector comparator” is the comparison between the present value of whole life costs during the project agreement term according to traditional (budgetary) model and the same type of costs according to PPP model;

¹ **Unofficial translation of the Law on Public Private Partnership (Official Gazette 3/17)**

- f) “Short project description” is the summary of a PPP project concept prepared by the public partner, i.e. its working body, and published on its web site to inform the public and the market of intentions to launch the PPP project;
- g) “Process consultant” is an external associate engaged by the public partner to provide technical support to proper implementation of identification, preparation, contracting and/or monitoring of a PPP project.
- h) “Project design” is the preparation of technical documentation required under the law, pending on the type of project;
- i) “Conflict of interest” is a situation in which a natural person or legal entity engaged as consultant is in a position to receive and/or receives material and/or nonmaterial gain from an interested bidder, i.e. future private partner, at any stage of preparation and implementation of the PPP project, such as may affect his/her legal right, transparency, objectivity and impartiality to perform his/her functions within the public partner working body.

(2) The other terms used in this Regulation shall have the same meanings as in the PPP Law.

SECTION II – IDENTIFICATION AND PREPARATION OF PUBLIC-PRIVATE PARTNERSHIP PROJECTS

Article 3 (Criteria for selection of potential PPP projects)

For a project to be included in the medium-term and annual plans of potential PPP projects at least the following criteria must be met:

- a) The potential PPP project concerns a public service which falls within the competence of the public partner developing the medium-term and annual plan;
- b) The public service improvement the potential PPP project aims to achieve is provided for under valid strategic documents of the public partner.

Article 4 (Medium-term plan of potential PPP projects)

- (1) The public partner shall draft a medium-term plan of potential PPP projects and submit it to the relevant authority for adoption.
- (2) The relevant public authority shall adopt the medium-term plan of potential PPP projects.
- (3) The medium-term plan of potential PPP projects shall be prepared using the template attached as Annex 1 to this Regulation.
- (4) In addition to the template referred to by paragraph (3) of this Article, a draft short project description attached as Annex 3 to this Regulation shall be submitted also for each potential PPP project.

Article 5 (Annual plan of potential PPP projects)

- (1) The public partner shall draft an annual plan of potential PPP projects and submit it to the relevant authority for adoption.
- (2) The relevant public authority shall adopt the annual plan of potential PPP projects.

- (3) The annual plan of potential PPP projects shall be prepared using the template attached as Annex 2 to this Regulation.
- (4) In addition to the template referred to by paragraph (3) of this Article, a draft short project description attached as Annex 3 to this Regulation and the section of the current year budget showing the budgetary position for the PPP project preparation activities (such as preparation of the required project documentation and/or of a feasibility study, and/or consultants fees, and/or fees of working body members, and/or specialised training/mentoring of the working body members, costs of materials and of working body support services, including translation, communications, etc.) shall be submitted also for each potential PPP project.

Article 6

(Private partner participation in preparation of project proposals)

- (1) An interested private partner shall send a written request to the public partner expressing interest to prepare a part of a specific PPP project proposal in line with Article 18 of the PPP Law.
- (2) In its written request, the public partner shall express readiness to prepare a part of the preliminary project design and feasibility study, suggest deadlines and method of preparation, and provide a certified statement of its financial capacity for the implementation.
- (3) The public partner shall decide on the submitted request within fifteen (15) days as of the date of its receipt.
- (4) Once the Decision to accept a submitted request is adopted, the public partner shall enter into negotiations with the interested private partner.
- (5) The Decision to accept a submitted request shall not bind the public partner to sign an agreement referred to by Article 18 (3) of the Law.

Article 7

(PPP project pipeline)

- (1) The Ministry of Economy shall develop a PPP project pipeline.
- (2) The PPP project pipeline shall be developed based on the public partner plans referred to by Articles 4 and 5 of this Regulation.

Article 8

(Sequence of PPP project preparation and contracting)

- (1) The preparation and contracting of PPP projects shall be done in four (4) main stages provided for by Article 10 of the PPP Law.
- (2) The public partner in cooperation with the working body shall regularly – following the completion of each stage – report to the public on the course of PPP project preparation.

SACTION III – PUBLIC PARTNER WORKING BODY

Article 9

(Procedure and criteria for selection of working body members)

- (1) The public partner shall prepare a draft Decision on the appointment of the working body.
- (2) The working body shall comprise five (5) or seven (7) members and shall be coordinated by the member holding a managerial position with the public partner.
- (3) The remaining members shall be selected based on the type and complexity of each project separately and may represent other public institutions and/or administrative bodies and/or public companies the support of which is needed for smooth preparation and implementation of the project.

- (4) The profile and expertise of the members shall depend on the type and complexity of each project. Each working body shall include at least a lawyer, an economist and a technical expert, pending on the type of project.
- (5) For special PPP model referred to by Article 8 (b) of the PPP Law, upon request by the public partner, the ministry granting concessions for the given PPP project shall propose one (1) member of the working body.
- (6) The public partner may, as required, change the composition of the working body and/or add new members for different stages of the process of preparation and contracting of the PPP project.

Article 10
(Rights and obligations of working body members)

- (1) The rights and obligations of the working body members shall be determined by the Decision on their appointment.
- (2) The Decision shall include terms of reference defining the minimum tasks and responsibilities of the working body (adopting the body's Rules of Procedure; developing a work plan with timetable referred to by Article 14 of the Law; amending and completing the final short project description referred to by Article 15 of the Law; developing tender documentation for the conceptual project design, i.e. preliminary project design referred to by Article 16 of the Law; preparing tender documentation for development of the feasibility study referred to by Article 17 of the Law and the tender documentation for selection of private partner referred to by Article 19 of the Law; preparing the draft agreement referred to by Article 21 of the Law) and establishing the final deadlines for completion of the activities, as well as any other elements needed.
- (3) Members of the working body shall be entitled to a remuneration, as regulated by a separate Decision adopted by the public partner in line with valid regulations and available funding.
- (4) The public partner, in coordination with the Ministry of Economy, must provide the working body with access to adequate specialised knowledge and skills related to the public-private partnership, either through insourcing or by hiring external consultants.

Article 11
(Procedure and criteria for selection of consultants)

- (1) The public partner may engage one or more consultants to support the entire PPP process (PPP process consultant) and/or legal, economic or technical consultants for any of the PPP project stages (identification, preparation, contracting, implementation, and monitoring of a PPP project).
- (2) The public partner shall select qualified consultants (natural persons or legal entities) in line with the Public Procurement Law ("BiH Official Gazette," No. 39/14).
- (3) Documentation for selection of consultants must include terms of reference for the consultancy services required and the relevant selection requirements.
- (4) Eligibility requirements for the selection of consultants referred to by paragraph (1) of this Article shall include:
 - a) For natural persons: relevant university degree, i.e. a diploma for the first (minimum 240 ECTS), second or third cycle of higher education as defined in the Bologna Declaration; minimum five (5) years of relevant work experience; and at least three (3) positive references (written and/or oral) from former employers and/or clients;
 - b) For legal entities: having a particular type of business registered; having at least three (3) employees who meet the criteria referred to by item (a) of this paragraph; and at least one (1) confirmation of a properly implemented contract (preferably, a PPP-related contract);
- (5) Minimum technical and financial criteria for the selection of consultants shall include:
 - a) Demonstrated understanding of the project terms of reference (on one A4 page at the most);
 - b) Financial proposal (gross per diem and expenses);

- c) Certified statement that the consultant does not have a conflict of interest referred to by Article 2 (1) (i) of this Regulation.
- (6) The public partner shall reserve the right to verify all elements of the applications.
- (7) The funds for engagement of consultants shall be secured under the public partner's budget and accounted for as part of public investment into the PPP project.
- (8) The public partner shall sign an appropriate contract with the selected consultant providing for their mutual rights and obligations. The terms of reference referred to by paragraph (3) of this Article shall form an integral part of the contract.

Article 12
(Work plan with timetable)

- (1) The working body, on their own, shall prepare a detailed work plan with timetable facilitating the implementation and monitoring against the expected results as defined by the terms of reference and the Decision to establish the working body.
- (2) The work plan with timetable shall be prepared using the template attached as Annex 4 to this Regulation.

SECTION IV – PPP PROJECT FEASIBILITY STUDY AND CALL FOR PROPOSALS FOR SELECTION OF PRIVATE PARTNER

Article 13
(Minimum feasibility study contents)

- (1) The public partner shall prepare a feasibility study on their own or with the assistance of consultants, pending on the capacities of the partner.
- (2) A PPP project feasibility study must include, at least:
 - a) Summary (total value of the project, recommended model, risk allocation table);
 - b) Introduction (short description of the project, with relevant output specifications and an overview of the study development methodology);
 - c) Assessments and analyses, including:
 - 1) Analysis of the ability to pay/undertake the long-term commitments of the public sector;
 - 2) Financial and economic appraisal and determining the financial and economic impact indicators;
 - 3) Risk identification and assessment, with the risk allocation table showing the allocation of risks between the public and private partner;
 - 4) Analysis of alternative approaches and exit options;
 - 5) Value for money assessment (public sector comparator);
 - d) Conclusion on whether the investment is justified and proposed model of project implementation;
 - e) Literature.
- (3) The risk assessment referred to by paragraph 2 (c) (3) of this Article shall cover the following risk areas:
 - a) Project development risk (risks related to definition and specification the project objective, standard of service, and project management);
 - b) Construction risk (design risk, cost of construction risk, completion risk);
 - c) Maintenance risk (technology risk, risks related to procurement of raw materials, operating costs and administrative risks);
 - d) Revenue risk (demand risk, performance/price risk);
 - e) Risks pertaining to sources of funding (financial risks related to both fixed and variable payments, interest rate risk, currency risk);
 - f) Other risks (regulatory, political, environmental risks, force majeure, etc.).

- (4) A PPP project feasibility study may include also other elements, pending on the type and/or specificities of the project.

Article 14
(Call for proposals for selection of private partner)

- (1) No later than within thirty (30) days as of the date of adoption of the Decision on the establishment of a PPP, the public partner shall publish a call for proposals for selection of private partner.
- (2) The call for proposals shall include, at least:
 - a) Subject of the call;
 - b) Summary of the feasibility study, including short project description with output specifications;
 - c) Eligibility criteria (personal and professional competencies);
 - d) Economic (qualitative aspects of the proposal) and financial criteria;
 - e) Evaluation methodology and the methodology of weighing the economic and financial criteria and sub-criteria;
 - f) Instructions for submission of proposals (method, deadlines, contact person, etc.);
 - g) Other relevant information.
- (3) The call for proposals shall be published in a way that ensures maximum circulation of the information to all potential private partners, including, at least, at the web site of the public partner, the web site of the Canton, and in two (2) daily newspapers distributed throughout Bosnia and Herzegovina.
- (4) The public partner must publish a shorter version of the call for proposals, translated at least to the English language, in the Official Journal of the European Union and/or at the web site of at least one (1) institution, agency, network or organisation that may circulate that information to potential international private partners.
- (5) In all PPP-related procedures, the public partner must abide by the Decision on Obligatory Application of Domestic Preferences in the Process of Public Procurement (“BiH Official Gazette,” No. 83/16).

Article 15
(Eligibility criteria for selection of private partner)

- (1) For the basic PPP model, as established by the feasibility study, a private partner must meet at least the requirements to acquire the construction right in line with property legislation.
- (2) The fee for the construction right referred to by Article 6 (d) of the PPP Law shall be accounted for in accordance with the Rulebook on Tendering Procedure for Use of Real Estate Owned by the Federation of Bosnia and Herzegovina, Cantons, Cities and Municipalities (“FBiH Official Gazette,” No. 17/14), whilst the transfer of the right to build to the selected private partner shall be considered a public partner contribution when accounting during the feasibility study development;
- (3) For the special PPP model, as established by the feasibility study, a private partner must meet at least the concession awarding requirements in line with legislation on concessions.
- (4) The concession required for implementation of a PPP project based on the special model shall be awarded to selected private partner and the concession fee may be considered as a public partner contribution when accounting during the feasibility study development;
- (5) The call for proposals shall specify other private partner eligibility criteria (personal and professional competencies) pending on the features of the PPP project.

Article 16
(Criterion for selection of private partner)

The criterion for the selection of private partner shall be the most economically advantageous tender.

Article 17
(Evaluation of proposals)

- (1) The working body shall open and evaluate the received proposals, take minutes and propose, by majority vote, a Decision on selection or Decision on cancellation to the public partner.
- (2) The public partner may, if requested by the working body, engage one or more consultants with specific technical or specialised knowledge and skills to help with the evaluation, provided that such knowledge and skills are not available within the working body. The consultants shall give opinions on the received proposals from their own field of expertise and shall not have voting rights.
- (3) The working body shall rank the proposals by majority vote, prepare a report on the procedure and submit to the public partner a proposed Decision on selection of private partner or Decision on cancellation of procedure within no later than thirty (30) days as of the last date for submission of proposals.

Article 18
(Cancellation of procedure)

A tendering procedure may be cancelled in the cases when:

- a) No proposals have been received within the specified deadline; or
- b) None of the proposals received have been found to be compliant.

Article 19
(Decision on selection and Decision on cancellation)

- (1) The public partner shall adopt a Decision on selection of private partner or a Decision on cancellation of tendering procedure within forty-five (45) days as of the last date for submission of proposals.
- (2) The public partner shall deliver the Decision on selection of private partner or the Decision on cancellation of tendering procedure to all bidders and to the Ministry of Economy within seven (7) days as of the date of its adoption, advising on legal remedy

PART V – CONTRACTING AND MONITORING PPP PROJECTS

Article 20
(Additional contents of PPP contracts)

- (1) The additional contents of a PPP contract shall include the relevant contracts, arrangements and standards and it shall be determined in line with the Law on Obligations and sector regulations, pending on purpose, subject and objective of the PPP contract.
- (2) The additional contents of a PPP contract may include the location or service standards, projections of whole life costs, payment mechanisms, financial arrangements indicating the sources of funding, contract on construction right and/or concessions, agreement/s providing for mutual rights and obligations between two or more public bodies involved in the PPP project, etc.

Article 21
(Registration of PPP contracts)

- (1) The public partner must register a PPP contract with the Ministry of Economy.
- (2) The registration procedure and keeping the Register of Public-Private Partnership Contracts shall be regulated in detail by the Rulebook on the establishing and maintenance of the Register of Public-Private Partnership Contracts.

Article 22
(Oversight and reporting on implementation of PPP contracts)

- (1) The public partner must provide the necessary human and financial resources for oversight and reporting on PPP contracts.
- (2) The elements of oversight and reporting (method, frequency, scope, etc.) shall be defined by the PPP contract for each project separately.
- (3) The resources referred to by paragraph (1) of this Article may not be considered as part of the overall financing structure of a PPP project and shall be provided under regular budgetary public administration funding.

PART VI – FINAL PROVISIONS

Article 23

- (1) The following Annexes shall be considered integral part of the Regulation:
 - a) Annex 1 – Medium-term plan of potential PPP projects;
 - b) Annex 2 – Annual plan of potential PPP projects;
 - c) Annex 3 – Short project description;
 - d) Annex 4 – Work plan with timetable.
- (2) The Annexes referred to by paragraph (1) of this Article shall be available at the Zenica-Doboj Canton web site.

Article 24
(Entry into force)

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

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