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PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

KUVENDI I KOSOVËS
СКУПШТИНА КОСОВА
ASSEMBLY OF KOSOVO

Law No. 02/L-44

ON THE PROCEDURE FOR THE AWARD OF CONCESSIONS

The Assembly of Kosovo,

Taking into account UNMIK Regulation No. 2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo, Articles 5.1 (b), (d) and (m), 5.7 and 9.1.26 (a); and

Considering it desirable to further develop the general principles of transparency, economy and fairness in the award of contracts by public authorities through the establishment of specific procedures for the award of concession contracts;

Recognizing the need to bring procedures concerning the award of concession contracts in Kosovo generally into compliance with internationally recognized best standards and practices;

Hereby adopts the following:

LAW ON THE PROCEDURE FOR THE AWARD OF CONCESSIONS

I. GENERAL PROVISIONS

Article 1
Definitions

For the purposes of this law:

“**Concession Contract**” means a contract concluded between a Contracting Authority and a Concessionaire that has as its principal object the implementation of an infrastructure project, the performance of which is compensated, in whole or in part, by a grant of a right to exploit the object of such contract.

“**Infrastructure Facility**” means physical facilities and systems that directly or indirectly provide services or items of value to or for the benefit of the general public.

“**Infrastructure Project**” means the design, construction, development and operation of new infrastructure facilities or the rehabilitation, modernization, expansion or operation of existing infrastructure facilities.

“**Contracting Authority**” means the Public Authority that has been given, under the law applicable in Kosovo, the authority to enter into a Concession Contract.

“**Concessionaire**” means the person that carries out an Infrastructure Project under a Concession Contract entered into with a Contracting Authority.

“**Business Organization**” shall have the meaning as set out in UNMIK Regulation No. 2001/6 of 8 February 2001 on Business Organizations.

“**Bidder**” or “**Bidders**” means persons, including groups thereof, that participate in selection proceedings concerning an Infrastructure Project.

“**Unsolicited Proposal**” means any proposal relating to the implementation of an Infrastructure Project that is not submitted in response to a request or solicitation issued by the Contracting Authority within the context of a selection procedure;

“**Public Authority**” means any of the following: (i) a central, regional, municipal or local executive authority, public body, ministry, department, agency, or other authority that exercises, pursuant to any normative or sub-normative act, executive, legislative, regulatory, public-administrative or judicial powers; (ii) a body governed by public law; and (iii) an association of one or more of such authorities and/or bodies;

“**Public Procurement Regulatory Commission**” means the Public Procurement Regulatory Commission established pursuant to Title V of the Law on Public Procurement.

Article 2 Scope of Application

2.1. The procedures for the award of a Concession Contract, the content of a Concession Contract and related matters shall be governed by the present Law, provided, however, that for matters not covered by the present Law, the provisions of the Law on Public Procurement governing works concession contracts shall be applied.

2.2. In the event of a conflict between the present Law and the relevant provisions of the Law on Public Procurement, the provisions of the present Law shall prevail.

Article 3 Nullity of Concession Contracts

Any Concession Contract awarded by a Contracting Authority in violation of the present Law shall be null and void.

II. SELECTION OF THE CONCESSIONAIRE

Article 4 Rules governing the selection proceedings

The selection of the Concessionaire shall be conducted in accordance with (i) Articles 5 to 27 of the present Law, and (ii), for matters not covered by those Articles, the applicable provisions of the Law on Public Procurement.

1. Pre-selection of Bidders

Article 5

Purpose and procedure of pre-selection

5.1. The Contracting Authority shall engage in pre-selection proceedings with a view to identifying Bidders that are suitably qualified to implement the envisaged Infrastructure Project.

5.2. The invitation to participate in the pre-selection proceedings shall be published in accordance with the relevant provisions of the Law on Public Procurement.

5.3. The invitation to participate in the pre-selection proceedings shall include at least the following:

- a A description of the Infrastructure Facility;
- b An indication of other essential elements of the project, such as the services to be delivered by the Concessionaire or the financial arrangements envisaged by the Contracting Authority;
- c Where already known, a summary of the main required terms of the Concession Contract to be entered into;
- d The manner and place for the submission of applications for pre-selection and the deadline for the submission, expressed as a specific date and time, allowing sufficient time for Bidders to prepare and submit their applications; and
- e The manner and place for solicitation of the pre-selection documents.

5.4. The pre-selection documents shall include at least the following information:

- a. The pre-selection criteria in accordance with Article 6;
- b. Whether the Contracting Authority intends to waive the limitations on the participation of consortia set forth in Article 7;
- c. Whether the Contracting Authority intends to request only a limited number of pre-selected Bidders to submit proposals upon completion of the pre-selection proceedings in accordance with Article 8, paragraph 2, and, if applicable, the manner in which this selection will be carried out;
- d. Whether the Contracting Authority intends to require the successful Bidder to establish a Corporation in accordance with Article 30.

Article 6

Pre-selection criteria

In order to qualify for the selection proceedings, interested Bidders must meet objectively justifiable criteria that the Contracting Authority considers appropriate in the particular proceedings, as stated in the pre-selection documents. These criteria shall include at least the following:

- a Adequate professional and technical qualifications, human resources, equipment and other physical facilities as necessary to carry out all the phases of the project, including design, construction, operation and maintenance;

- b Sufficient ability to manage the financial aspects of the project and capability to sustain its financing requirements;
- c Appropriate managerial and organizational capability, reliability and experience, including previous experience in operating similar infrastructure facilities.

Article 7 Participation of consortia

7.1. The Contracting Authority, when first inviting the participation of Bidders in the selection proceedings, shall allow them to form bidding consortia. The information required from members of bidding consortia to demonstrate their qualifications in accordance with Article 6 shall relate to the consortium as a whole as well as to its individual participants.

7.2. Unless otherwise stated in the pre-selection documents, each member of a consortium may participate, either directly or indirectly, in only one consortium at the same time. A violation of this rule shall cause the disqualification of the consortium and of the individual members.

7.3. When considering the qualifications of bidding consortia, the Contracting Authority shall consider the capabilities of each of the consortium members and assess whether the combined qualifications of the consortium members are adequate to meet the needs of all phases of the project.

Article 8 Decision on pre-selection

8.1. The Contracting Authority shall make a decision with respect to the qualifications of each Bidder that has submitted an application for pre-selection. In reaching that decision, the Contracting Authority shall apply only the criteria that are set forth in the pre-selection documents. All pre-selected Bidders shall thereafter be invited by the Contracting Authority to submit proposals in accordance with Articles 9 to 17.

8.2. Notwithstanding paragraph 1, the Contracting Authority may, provided that it has made an appropriate statement in the pre-selection documents to that effect, reserve the right to request proposals upon completion of the pre-selection proceedings only from a limited number of Bidders that best meet the pre-selection criteria. For this purpose, the Contracting Authority shall rate the Bidders that meet the pre-selection criteria on the basis of the criteria applied to assess their qualifications and draw up the list of Bidders that will be invited to submit proposals upon completion of the pre-selection proceedings. In drawing up the list, the Contracting Authority shall apply only the manner of rating that is set forth in the pre-selection documents.

2. Procedures for requesting proposals

Article 9

Single-stage and two-stage procedures for requesting proposals

9.1. The Contracting Authority shall provide a set of the request for proposals and related documents issued in accordance with Article 10 to each pre-selected Bidder that pays the price, if any, charged for those documents.

9.2. Notwithstanding the above, the Contracting Authority may use a two-stage procedure to request proposals from pre-selected Bidders when the Contracting Authority does not deem it to be feasible to describe in the request for proposals the characteristics of the project such as project specifications, performance indicators, financial arrangements or contractual terms in a manner sufficiently detailed and precise to permit final proposals to be formulated.

9.3. Where a two-stage procedure is used, the following provisions apply:

- a. The initial request for proposals shall call upon the Bidders to submit, in the first stage of the procedure, initial proposals relating to project specifications, performance indicators, financing requirements or other characteristics of the project as well as to the main contractual terms proposed by the Contracting Authority;
- b. The Contracting Authority may convene meetings and hold discussions with any of the Bidders to clarify questions concerning the initial request for proposals or the initial proposals and accompanying documents submitted by the Bidders. The Contracting Authority shall prepare minutes of any such meeting or discussion containing the questions raised and the clarifications provided by the Contracting Authority;
- c. Following examination of the proposals received, the Contracting Authority may review and, as appropriate, revise the initial request for proposals by deleting or modifying any aspect of the initial project specifications, performance indicators, financing requirements or other characteristics of the project, including the main contractual terms, and any criterion for evaluating and comparing proposals and for ascertaining the successful Bidder, as set forth in the initial request for proposals, as well as by adding characteristics or criteria to it. The Contracting Authority shall indicate in the record of the selection proceedings to be kept pursuant to Article 26 the justification for any revision to the request for proposals. Any such deletion, modification or addition shall be communicated in the invitation to submit final proposals;
- d. In the second stage of the proceedings, the Contracting Authority shall invite the Bidders to submit final proposals with respect to a single set of project specifications, performance indicators or contractual terms in accordance with Articles 10 to 17.

Article 10

Content of the request for proposals

The request for proposals shall include at least the following information:

- a. General information as may be required by the Bidders in order to prepare and submit their proposals, including information on the deadline for submission of proposals;
- b. Project specifications and performance indicators, as appropriate, including the Contracting Authority's requirements regarding safety and security standards and environmental protection;

- c The contractual terms proposed by the Contracting Authority, including an indication of which terms are deemed to be non-negotiable;
- d The criteria for evaluating proposals and the thresholds, if any, set by the Contracting Authority for identifying non-responsive proposals; the relative weight to be accorded to each evaluation criterion; and the manner in which the criteria and thresholds are to be applied in the evaluation and rejection of proposals.

Article 11 Bid securities

11.1. The request for proposals shall set forth the requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required bid security.

11.2. A Bidder shall not forfeit any bid security that it may have been required to provide, other than in cases of:

- a. Withdrawal or modification of a proposal after the deadline for submission of proposals and, if so stipulated in the request for proposals, before that deadline;
- b. Failure to enter into final negotiations with the Contracting Authority pursuant to Article 17, paragraph 1;
- c. Failure to submit its best and final offer within the time limit prescribed by the Contracting Authority pursuant to Article 17, paragraph 2;
- d. Failure to sign the Concession Contract, if required by the Contracting Authority to do so, after the proposal has been accepted;
- e. Failure to provide required security for the fulfillment of the Concession Contract after the proposal has been accepted or to comply with any other condition prior to signing the Concession Contract specified in the request for proposals.

Article 12 Clarifications and modifications

The Contracting Authority may, whether on its own initiative or as a result of a request for clarification by a Bidder, review and, as appropriate, revise any element of the request for proposals as set forth in Article 10. The Contracting Authority shall indicate in the record of the selection proceedings to be kept pursuant to Article 26 the justification for any revision to the request for proposals. Any such deletion, modification or addition shall be communicated to the Bidders in the same manner as the request for proposals at a reasonable time prior to the deadline for submission of proposals.

Article 13 Submission of Proposals

The Bidders shall submit their proposals in writing, signed and placed in sealed envelopes. A proposal received by the Contracting Authority after the deadline for submission of proposals shall not be opened and shall be returned to the Bidder that submitted it.

Article 14
Evaluation criteria

14.1. The criteria for the evaluation and comparison of the technical proposals shall include at least the following:

- a Technical soundness;
- b Compliance with environmental standards;
- c Operational feasibility;
- d Quality of services and measures to ensure their continuity.

14.2. The criteria for the evaluation and comparison of the financial and commercial proposals shall include, as appropriate:

- a. The present value of the proposed tolls, unit prices and other charges over the concession period;
- b. The present value of the proposed direct payments by the Contracting Authority, if any;
- c. The costs for design and construction activities, annual operation and maintenance costs, present value of capital costs and operating and maintenance costs;
- d. The extent of financial support, if any, expected from a Public Authority;
- e. The soundness of the proposed financial arrangements;
- f. The extent of acceptance of the negotiable contractual terms proposed by the Contracting Authority in the request for proposals;
- g. The social and economic development potential offered by the proposals.

Article 15
Comparison and evaluation of proposals

The Contracting Authority shall compare and evaluate each proposal in accordance with the evaluation criteria, the relative weight accorded to each such criterion and the evaluation process set forth in the request for proposals.

Article 16
Further demonstration of fulfillment of qualification Criteria

The Contracting Authority may require any Bidder that has been pre-selected to demonstrate again its qualifications in accordance with the same criteria used for pre-selection. The Contracting Authority shall disqualify any Bidder that fails to demonstrate again its qualifications if requested to do so.

Article 17
Final negotiations

17.1. The Contracting Authority shall rank all responsive proposals on the basis of the evaluation criteria and invite for final negotiation of the Concession Contract the Bidder that has attained the best rating. Final negotiations shall not concern those contractual terms, if any, that were stated as non-negotiable in the final request for proposals.

17.2. If it becomes apparent to the Contracting Authority that the negotiations with the Bidder invited will not result in a Concession Contract, the Contracting Authority shall inform the Bidder of its intention to terminate the negotiations and give the Bidder reasonable time to formulate its best and final offer. If the Contracting Authority does not find that proposal acceptable, it shall terminate the negotiations with the Bidder concerned. The Contracting Authority shall then invite for negotiations the other Bidders in the order of their ranking until it arrives at a Concession Contract or rejects all remaining proposals. The Contracting Authority shall not resume negotiations with a Bidder with which negotiations have been terminated pursuant to this paragraph.

3. Negotiation of Concession Contracts without competitive procedures

Article 18

Circumstances authorizing award without competitive procedures

Subject to approval by the Public Procurement Regulatory Commission, the Contracting Authority is authorized to negotiate a Concession Contract without using the procedure set forth in Articles 5 to 17 in the following cases:

- a. When there is an urgent need for ensuring continuity in the provision of the service and engaging in the procedures set forth in Articles 5 to 17 would be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the Contracting Authority nor the result of dilatory conduct on its part;
- b. Where the project is of short duration and the anticipated initial investment value does not exceed the amount of 10.000 €;
- c. Where the project involves matters pertaining to public security;
- d. Where there is only one source capable of providing the required service, such as when the provision of the service requires the use of intellectual property, trade secrets or other exclusive rights owned or possessed by a certain person or persons;
- e. In cases of Unsolicited Proposals falling under Article 23;
- f. When an invitation to the pre-selection proceedings or a request for proposals has been issued but no applications or proposals were submitted or all proposals failed to meet the evaluation criteria set forth in the request for proposals and if, in the judgment of the Contracting Authority, issuing a new invitation to the pre-selection proceedings and a new request for proposals would be unlikely to result in a project award within a required time frame; or
- g. In other cases where the Public Procurement Regulatory Commission authorizes such an exception for compelling reasons of public interest.

Article 19
Procedures for negotiation of a Concession Contract

Where a Concession Contract is negotiated without using the procedures set forth in Articles 5-16 the Contracting Authority shall:

- a. Except for Concession Contracts negotiated pursuant to Article 18, subparagraph (c), cause a notice of its intention to commence negotiations in respect of a Concession Contract to be published in accordance with the relevant provisions of the Law on Public Procurement;
- b. Engage in negotiations with as many persons as the Contracting Authority judges capable of carrying out the project as circumstances permit;
- c. Establish evaluation criteria against which proposals shall be evaluated and ranked.

4. Unsolicited Proposals

Article 20
Admissibility of Unsolicited Proposals

The Contracting Authority is authorized to consider Unsolicited Proposals pursuant to the procedures set forth in Articles 21 to 23, provided that such proposals do not relate to a project for which selection procedures have been initiated or announced.

Article 21
Procedures for determining the admissibility of Unsolicited Proposals

21.1. Following receipt and preliminary examination of an Unsolicited Proposal, the Contracting Authority shall promptly inform the proponent whether or not the project is considered to be potentially in the public interest.

21.2. If the project is considered to be potentially in the public interest, the Contracting Authority shall invite the proponent to submit as much information on the proposed project as is feasible at this stage to allow the Contracting Authority to make a proper evaluation of the proponent's qualifications and the technical and economic feasibility of the project and to determine whether the project is likely to be successfully implemented in the manner proposed in terms acceptable to the Contracting Authority. For this purpose, the proponent shall submit a technical and economic feasibility study, an environmental impact study and satisfactory information regarding the concept or technology contemplated in the proposal.

21.3. In considering an Unsolicited Proposal, the Contracting Authority shall respect the intellectual property, trade secrets or other exclusive rights contained in, arising from or referred to in the proposal. Therefore, the Contracting Authority shall not make use of information provided by or on behalf of the proponent in connection with its Unsolicited Proposal other than for the evaluation of that proposal, except with the consent of the proponent. Except as otherwise agreed by the parties, the Contracting Authority shall, if the proposal is rejected, return to the proponent the original and any copies of documents that the proponent submitted and prepared throughout the procedure.

Article 22
Unsolicited Proposals that do not involve intellectual property, trade secrets
or other exclusive rights

22.1. The Contracting Authority shall, if it decides to implement the project, initiate a selection procedure in accordance with Articles 5 to 17 if the Contracting Authority considers that:

- a. The envisaged output of the project can be achieved without the use of intellectual property, trade secrets or other exclusive rights owned or possessed by the proponent; and
- b. The proposed concept or technology is not truly unique or new.

22.2. The proponent shall be invited to participate in the selection proceedings initiated by the Contracting Authority pursuant to paragraph 1 and may be given an incentive or a similar benefit in a manner described by the Contracting Authority in the request for proposals in consideration for the development and submission of the proposal.

Article 23
Unsolicited Proposals involving intellectual property, trade secrets
or other exclusive rights

23.1. If the Contracting Authority determines that the conditions of Article 22, paragraph 1 (a) and (b), are not met, it shall not be required to carry out a selection procedure pursuant to Articles 5 to 17. However, the Contracting Authority may still seek to obtain elements of comparison for the Unsolicited Proposal in accordance with the provisions set out in paragraphs 2 to 4 of this Article.

23.2. Where the Contracting Authority intends to obtain elements of comparison for the Unsolicited Proposal, the Contracting Authority shall publish a description of the essential output elements of the proposal with an invitation for other interested parties to submit proposals within 30 days.

23.3. If no proposals in response to an invitation issued pursuant to paragraph 2 of this Article are received within the period of time specified in paragraph 2 above, the Contracting Authority may engage in negotiations with the original proponent.

23.4. If the Contracting Authority receives proposals in response to an invitation issued pursuant to paragraph 2, the Contracting Authority shall invite the proponents to negotiations in accordance with the provisions set forth in Article 19. In the event that the Contracting Authority receives a sufficiently large number of proposals, which appear prima facie to meet its infrastructure needs, the Contracting Authority shall request the submission of proposals pursuant to Articles 9 to 17, subject to any incentive or other benefit that may be given to the person who submitted the Unsolicited Proposal in accordance with Article 22, paragraph 2.

5. Miscellaneous provisions

Article 24 Confidentiality

The Contracting Authority shall treat proposals in such a manner as to avoid the disclosure of their content to competing Bidders. Any discussions, communications and negotiations between the Contracting Authority and a Bidder pursuant to Articles 9, paragraph 3, Articles 17, 18, 19 or 23, paragraphs 3 and 4, shall be confidential. Unless required by law or by a court order or permitted by the request for proposals, no party to the negotiations shall disclose to any other person any technical, price or other information in relation to discussions, communications and negotiations pursuant to the aforementioned provisions without the consent of the other party.

Article 25 Notice of contract award

Except for Concession Contracts awarded pursuant to Article 18, subparagraph (c), the Contracting Authority shall cause a notice of the contract award to be published in accordance with the relevant provisions of the Law on Public Procurement. The notice shall identify the Concessionaire and include a summary of the essential terms of the Concession Contract.

Article 26 Record of selection and award proceedings

The Contracting Authority shall keep an appropriate record of information pertaining to the selection and award proceedings in accordance with the relevant provisions of the Law on Public Procurement.

Article 27 Review procedures

A Bidder that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the Contracting Authority by the law may seek review of the Contracting Authority's acts or failures to act in accordance with the relevant provisions of the Law on Public Procurement.

III. CONTENTS AND IMPLEMENTATION OF THE CONCESSION CONTRACT

Article 28 Contents and implementation of the Concession Contract

The Concession Contract shall provide for such matters as the parties deem appropriate, such as:

- a. The nature and scope of works to be performed and services to be provided by the Concessionaire;
- b. The conditions for provision of those services and the extent of exclusivity, if any, of the Concessionaire's rights under the Concession Contract;

- c. The assistance that the Contracting Authority may provide to the Concessionaire in obtaining licenses and permits to the extent necessary for the implementation of the Infrastructure Project;
- d. Any requirements relating to the establishment and minimum capital of a legal entity incorporated in accordance with Article 30;
- e. The ownership of assets related to the project and the obligations of the parties, as appropriate, concerning the acquisition of the project site and any necessary easements, in accordance with Articles 31 to 33;
- f. The remuneration of the Concessionaire, whether consisting of tariffs or fees for the use of the facility or the provision of services; the methods and formulas for the establishment or adjustment of any such tariffs or fees; and payments, if any, that may be made by the Contracting Authority or other Public Authority;
- g. Procedures for the review and approval of engineering designs, construction plans and specifications by the Contracting Authority, and the procedures for testing and final inspection, approval and acceptance of the Infrastructure Facility;
- h. The extent of the Concessionaire's obligations to ensure, as appropriate, the modification of the service so as to meet the actual demand for the service, its continuity and its provision under essentially the same conditions for all users;
- i. The Contracting Authority's or other Public Authority's right to monitor the works to be performed and services to be provided by the Concessionaire and the conditions and extent to which the Contracting Authority or any other authorized Public Authority may order variations in respect of the works and conditions of service or take such other reasonable actions as they may find appropriate to ensure that the Infrastructure Facility is properly operated and the services are provided in accordance with the applicable legal and contractual requirements;
- j. The extent of the Concessionaire's obligation to provide the Contracting Authority or any other Public Authority with reports and other information on its operations;
- k. Mechanisms to deal with additional costs and other consequences that might result from any order issued by the Contracting Authority or another Public Authority in connection with subparagraphs (h) and (i) above, including any compensation to which the Concessionaire might be entitled;
- l. To the extent considered necessary, any rights of the Contracting Authority to review and approve major contracts to be entered into by the Concessionaire, in particular with the Concessionaire's own shareholders or other affiliated persons;
- m. Guarantees of performance to be provided and insurance policies to be maintained by the Concessionaire in connection with the implementation of the Infrastructure Project;
- n. Remedies available in the event of default of either party;
- o. The extent to which either party may be exempt from liability for failure or delay in complying with any obligation under the Concession Contract owing to circumstances beyond its reasonable control;

- p. The duration of the Concession Contract and the rights and obligations of the parties upon its expiry or termination;
- q. The manner for calculating compensation pursuant to Article 47;
- r. The governing law and the mechanisms for the settlement of disputes that may arise between the Contracting Authority and the Concessionaire;
- s. The rights and obligations of the parties with respect to confidential information.

Article 29 Governing law

The Concession Contract is governed by the law applicable in Kosovo unless otherwise provided in the Concession Contract.

Article 30 Organization of the Concessionaire

The Contracting Authority may require that the successful Bidder establish a Business Organization, provided that a statement to that effect was made in the pre-selection documents or in the request for proposals, as appropriate. Any requirement relating to the minimum capital of such a legal entity and the procedures for obtaining the approval of the Contracting Authority to its statute and by-laws and significant changes therein shall be set forth in the Concession Contract consistent with the terms of the request for proposals.

Article 31 Ownership of assets

The Concession Contract shall specify, which assets are or shall be public property and which assets are or shall be the private property of the Concessionaire. The Concession Contract shall in particular identify which assets belong to the following categories:

- a. Assets, that the Concessionaire is required to return or transfer to the Contracting Authority or to another entity indicated by the Contracting Authority in accordance with the terms of the Concession Contract;
- b. Assets, that the Contracting Authority, at its option, may purchase from the Concessionaire; and
- c. Assets that the Concessionaire may retain or dispose of upon expiry or termination of the Concession Contract.

Article 32 Acquisition of rights related to the project site

The Contracting Authority or other Public Authority under the terms of the law and the Concession Contract shall make available to the Concessionaire or, as appropriate, shall assist the Concessionaire in obtaining such rights related to the project site, including title thereto, as may be necessary for the implementation of the project.

Article 33
Easements

33.1. The Concessionaire shall have the right to enter upon, transit through or do work or fix installations upon property of third parties, as appropriate and required for the implementation of the project in accordance with the provisions of the applicable law on property rights.

33.2. Any easements that may be required for the implementation of the project shall be created in accordance with the applicable law on property rights.

Article 34
Financial arrangements

34.1. The Concessionaire shall have the right to charge, receive or collect tariffs or fees for the use of the facility or its services in accordance with the Concession Contract, which shall provide for methods and formulas for the establishment and adjustment of those tariffs or fees in accordance with the rules established by the competent Public Authority.

34.2. The Contracting Authority shall have the power to agree to make direct payments to the Concessionaire as a substitute for, or in addition to, tariffs or fees for the use of the facility or its services.

Article 35
Security interests

35.1. Subject to any restriction that may be contained in the Concession Contract, the Concessionaire has the right to create security interests over any of its assets, rights or interests, including those relating to the Infrastructure Project, as required to secure any financing needed for the project.

35.2. The shareholders of the Concessionaire shall have the right to pledge or create any other security interest in their shares in the Concessionaire.

35.3. No security under paragraph 1 may be created over public property or other property, assets or rights needed for the provision of a public service, where the creation of such security is prohibited by the applicable law.

Article 36
Assignment of the Concession Contract

Except as otherwise provided in Article 35, the rights and obligations of the Concessionaire under the Concession Contract may not be assigned to third parties without the consent of the Contracting Authority. The Concession Contract shall set forth the conditions under which the Contracting Authority shall give its consent to an assignment of the rights and obligations of the Concessionaire under the Concession Contract, including the acceptance by the new Concessionaire of all obligations thereunder and evidence of the new Concessionaire's technical and financial capability as necessary for providing the service.

Article 37
Transfer of controlling interest in the Concessionaire

Except as otherwise provided in the Concession Contract, a controlling interest in the Concessionaire may not be transferred to third parties without the consent of the Contracting Authority. The Concession Contract shall set forth the conditions under which consent of the Contracting Authority shall be given.

Article 38
Operation of infrastructure

38.1. The Concession Contract shall set forth, as appropriate, the extent of the Concessionaire's obligations to ensure:

- a. The modification of the service so as to meet the demand for the service;
- b. The continuity of the service;
- c. The provision of the service under essentially the same conditions for all users;
- d. The non-discriminatory access, of other service providers to any public infrastructure network operated by the Concessionaire.

38.2. The Concessionaire shall have the right to issue and enforce rules governing the use of the facility, subject to the approval of the Contracting Authority or any other authorized Public Authority.

Article 39
Compensation for specific changes in legislation

The Concession Contract shall set forth the extent to which the Concessionaire is entitled to compensation in the event that the cost of the Concessionaire's performance of the Concession Contract has substantially increased or that the value that the Concessionaire receives for such performance has substantially diminished as a result of changes in legislation or regulations specifically applicable to the Infrastructure Facility or the services it provides.

Article 40
Revision of the Concession Contract

40.1. Without prejudice to Article 39, the Concession Contract shall further set forth the extent to which the Concessionaire is entitled to a revision of the Concession Contract with a view to providing compensation in the event that the cost of the Concessionaire's performance of the Concession Contract has substantially increased or that the value that the Concessionaire receives for such performance has substantially diminished as a result of:

- a. Changes in economic or financial conditions; or
- b. Changes in legislation or regulations not specifically applicable to the Infrastructure Facility or the services it provides;

provided that the economic, financial, legislative or regulatory changes:

- a. Occur after the conclusion of the contract;
- b. Are beyond the control of the Concessionaire; and

- c. Are of such a nature that the Concessionaire could not reasonably be expected to have taken them into account at the time the Concession Contract was negotiated or to have avoided or overcome their consequences.

40.2. The Concession Contract shall establish procedures for revising the terms of the Concession Contract.

Article 41

Takeover of an Infrastructure Project by the Contracting Authority

Under the circumstances set forth in the Concession Contract, the Contracting Authority has the right to temporarily take over the operation of the facility for the purpose of ensuring the effective and uninterrupted delivery of the service in the event of serious failure by the Concessionaire to perform its obligations and to rectify the breach within a reasonable period of time after having been given notice by the Contracting Authority to do so.

Article 42

Substitution of the Concessionaire

The Contracting Authority may agree with the entities extending financing for an Infrastructure Project and the Concessionaire to provide for the substitution of the Concessionaire by a new entity or person appointed to perform under the existing Concession Contract upon serious breach by the Concessionaire or other events that could otherwise justify the termination of the Concession Contract.

IV. DURATION, EXTENSION AND TERMINATION OF THE CONCESSION CONTRACT

1. Duration and extension of the Concession Contract

Article 43

Duration and extension of the Concession Contract

43.1. The duration of the concession shall be set forth in the Concession Contract taking into consideration the maximum duration of a Concession Contract as permitted by the respective legislation.

43.2. The Contracting Authority may agree to extend the duration of the Concession Contract for an additional period of not more than 10 years, unless otherwise determined by law.

43.3. The Contracting Authority shall agree to extend duration of the Concession Contract in the following circumstances:

- a. Delay in completion or interruption of operation due to circumstances beyond the reasonable control of either party;
- b. Project suspension brought about by acts of the Contracting Authority or other public authorities; or
- c. Increase in costs arising from requirements of the Contracting Authority not originally foreseen in the Concession Contract, if the Concessionaire would not be able to recover such costs without such extension.

2. Termination of the Concession Contract

Article 44

Termination of the Concession Contract by the Contracting Authority

The Contracting Authority may terminate the Concession Contract:

- a. In the event that it can no longer be reasonably expected that the Concessionaire will be able or willing to perform its obligations; or
- b. For compelling reasons of public interest, subject to payment of compensation to the Concessionaire, the terms of the compensation to be as agreed in the Concession Contract.

Article 45

Termination of the Concession Contract by the Concessionaire

The Concessionaire may not terminate the Concession Contract except under the following circumstances:

- a. In the event of serious breach by the Contracting Authority or other Public Authority of its obligations in connection with the Concession Contract;
- b. If the conditions for a revision of the Concession Contract under Article 40, paragraph 1, are met, but the parties have failed to agree on a revision of the Concession Contract; or
- c. If the cost of the Concessionaire's performance of the Concession Contract has substantially increased or the value that the Concessionaire receives for such performance has substantially diminished as a result of acts or omissions of the Contracting Authority or other public authorities and the parties have failed to agree on a revision of the Concession Contract.

Article 46

Termination of the Concession Contract in other cases

Either party shall have the right to terminate the Concession Contract in the event that the performance of its obligations is rendered impossible by circumstances beyond either party's reasonable control. The parties shall also have the right to terminate the Concession Contract by mutual consent.

3. Arrangements upon termination or expiry of the Concession Contract

Article 47

Compensation upon termination of the Concession Contract

The Concession Contract shall stipulate how compensation due to either party is calculated in the event of termination of the Concession Contract, providing, where appropriate, for compensation for the fair value of works performed under the Concession Contract, costs incurred or losses sustained by either party, including, as appropriate, lost profits.

Article 48
Wind-up and transfer measures

The Concession Contract shall provide, as appropriate, for:

- a. Procedures for the transfer of assets to the Contracting Authority;
- b. The compensation to which the Concessionaire may be entitled in respect of assets transferred to the Contracting Authority or to a new Concessionaire or purchased by the Contracting Authority;
- c. The transfer of technology required for the operation of the facility;
- d. The training of the Contracting Authority's personnel or of a successor Concessionaire in the operation and maintenance of the facility;
- e. The provision, by the Concessionaire, of continuing support services and resources, including the supply of spare parts, if required, for a reasonable period after the transfer of the facility to the Contracting Authority or to a successor Concessionaire.

V. SETTLEMENT OF DISPUTES

Article 49
Disputes between the Contracting Authority and the Concessionaire

Any disputes between the Contracting Authority and the Concessionaire shall be settled through the dispute settlement procedures agreed by the parties in the Concession Contract.

Article 50
Disputes involving customers or users of the Infrastructure Facility

Where the Concessionaire provides services to the public or operates infrastructure facilities accessible to the public, the Contracting Authority may require the Concessionaire to establish simplified and efficient procedures for handling claims submitted by its customers or users of the Infrastructure Facility.

VI. PUBLIC PROCUREMENT REGULATORY COMMISSION

Article 51
Public Procurement Regulatory Commission

51.1. The Public Procurement Regulatory Commission (PPRC) shall be responsible for ensuring the proper implementation of the present Law. The PPRC shall, therefore, have the same functions and powers with respect to the implementation of the present Law as it has with respect to the implementation of the Law on Public Procurement.

51.2. The PPRC shall also have the authority to develop and issue rules and other secondary legislation to effect the proper implementation of the present Law. The PPRC shall, therefore, have the same powers and functions with respect to the present Law, as are currently exercised by the Rules Committee with respect to the Law on Public Procurement.

VII. FINAL PROVISIONS

Article 52

Repeal of previous legislation

The present Law and any implementing rules issued hereunder shall supersede all prior legislation and rules governing the award of Concession Contracts in Kosovo.

Article 53

Entry into force

The present law shall enter into force after adoption by the Assembly of Kosova on the date of its promulgation by the Special Representative of the Secretary-General.

Law No. 02/L-44
3 October 2005

President of the Assembly

Academic Nexhat Daci