

# I BASIC PROVISIONS

## ***Scope of the Law***

### **Article 1**

This Law governs: conditions and method of preparing, proposing and approving of public-private partnership projects; specifies the entities competent, i.e., authorized to propose and realize the public-private partnership projects; rights and obligations of public and private partners; form and content of the contract on public-private partnership with or without elements of concession (hereinafter: the public contract) and legal protection in procedures of awarding public contract; conditions and manner of concession awarding, subject matter of concession, entities competent, i.e., authorized to conduct concession award procedure, termination of concession; protection of rights of the participants in the procedures of awarding public contracts; establishing, status and competence of the Commission for Public-Private Partnership, as well as other issues of significance for a public-private partnership, with or without elements of a concession, i.e. for a concession.

## ***Application of the Law***

### **Article 2**

Provisions of this Law and the relevant provisions of the law and other regulations that govern public property and budgetary system apply to all the investments of publicly owned assets into a joint company with a private partner exclusively for the purpose of realization of public-private partnership projects.

Provisions of this Law, except for the provisions pertaining to the procedure of awarding public contracts, apply to public-private partnerships carried out in compliance with the special rules of procedure of international organizations.

### **Article 3**

This Law does not apply to public-private partnerships, with or without elements of a concession, if:

- 1) The establishment of a public-private partnership would require access to information that if revealed, would present a threat to the security of the Republic of Serbia;
- 2) Such partnership would be based on international agreements concluded between the Republic of Serbia and one or multiple countries for the purpose of joint implementation or usage of projects;
- 3) The subject matter of such partnership would be the exploitation of the public telecommunications network, i.e. provision of telecommunication services.

## ***Definitions***

### **Article 4**

Certain terms used in this Law have the following meaning:

- 1) *Public-private partnership project* is a project prepared, proposed, approved and implemented according to some of the public-private partnership models and comprising of a series of interconnected activities which are implemented in a specified order in order to achieve defined objectives, within a specified period of time and with specified financial means, and which is approved in compliance with this Law as a public-private partnership project, with or without elements of concession.
- 2) *Contractual public-private partnership* is a public-private partnership where the mutual relation between the public and the private partner is regulated by a public-private partnership contract.
- 3) *Public contract* is a public-private partnership contract with or without elements of concession, concluded in written form between a public and a private partner, which stipulates the mutual rights and obligations of contracting parties with the aim of realizing a public-private partnership project.
- 4) *Institutional public-private partnership* is a public-private partnership based on a relationship between a public and a private partner as founders, i.e. members of a joint company, which is the lead in charge of the realization of the public-private partnership project.

4a) *Public contract on institutional public-private partnership with the elements of concession* is a contract that stipulates the rights and obligations of the concession grantor and the concessionaire, in accordance with the provisions of this Law and provisions of other regulations which govern the issues belonging to the subject matter of the concession

5) *Public infrastructure* is a publicly exploited facility, i.e. a facility made available for public use or for the well-being of the general public (or a group of persons or entities that can be accessed freely and that is predefined in the abstract sense only) in any public service or economic sector.

6) *Special purpose vehicle* (hereinafter: SPV) is a company established by a private, i.e. public partner for the needs of conclusion of the public contract, i.e. for the needs of realization of a public-private partnership project.

7) *Public body* is:

(1) State body, organization, institution and other direct or indirect user of budget funds within the meaning of the law regulating the budget system and the budget, as well as the organization for mandatory social insurance;

(2) Public enterprise;

(3) Legal person that additionally conducts an activity of general interest, providing that any of the following conditions is met:

- More than a half of the management body membership of such legal person consists of representatives of a public body;

- More than a half of the votes in the body of that legal person are held by representatives of a public body;

- A public body supervises the operations of that legal person;

- A public body owns more than 50% of the shares, i.e. stake in such legal entity;

- More than 50% of its financing is provided from the funds of a public body.

(4) Legal person established by a public body, which additionally conducts an activity of general interest and complies with at least one condition listed in item 7), sub-item (3) of this Article.

8) *Public enterprise*, within the meaning of this Law, is any enterprise, i.e. company over which a public body may exercise, directly or indirectly, dominant influence by virtue of ownership over it, based on the financial participation therein, or based on the rules which govern it. Dominant influence by the public body in relation to an enterprise, i.e. a company is presumed in any of the following cases in which such entities, directly or indirectly:

(1) Hold the majority of the subscribed capital, or

(2) Control the majority of votes attached to the shares issued by that enterprise, i.e. company, or

(3) Can appoint more than a half of the members of the administrative, management or supervisory body of that enterprise, i.e. company.

9) *Public partner* is one or multiple public bodies, i.e. a legal person that is, in compliance with this Law, competent to award concession, i.e. to realize a public-private partnership project which concludes a public contract with a private partner, or one or multiple public bodies that are linked with a private partner by virtue of the membership in a joint company.

10) *Private partner* is a natural person or legal entity, domestic or international, with or without a domestic or international participation, or a consortium of one or a number of such natural persons or legal persons selected in a public procurement procedure or in a concession award procedure, that concludes a public contract with a public partner, i.e. also the SPV established by the private partner when concluding the public contract with the public partner, or establishes a joint company with a public partner.

11) *Private partner selection procedure* is a public procurement procedure in compliance with the law regulating public procurements or the concession award procedure in compliance with this Law.

12) *Concession fee* is a fee paid by the concessionaire or by the grantor, in compliance with the public contract that regulates the concession.

13) *Register of public contracts* is a consolidated electronic database for recording of public contracts and monitoring of the realization of such contracts that are, in compliance with this Law, being implemented in the territory of the Republic of Serbia.

14) *Decision on the selection of the most advantageous tender* is a document adopted by a public body, after evaluation of tenders received for the award of a public contract, in compliance with the tender dossier and criteria for the selection of the most advantageous tender.

15) *Tenderer* is a legal or natural person, or a consortium of one or more such natural or legal persons, that submitted a tender in a public procurement procedure for the award of a public contract, i.e., in the concession award procedure.

16) *(Deleted)*

17) *Unsolicited proposal* is a proposal by an interested party to the competent public body for the implementation, i.e. realization of a public-private partnership project with or without elements of concession, which is not submitted in response to a public invitation by the contracting authority in a public contract award procedure.

18) *Adviser* is one or more legal persons, i.e. natural persons possessing the expertise necessary for the preparation, contracting and realization of public- private partnership projects.

19) *Written or in writing* means any written document comprising of words or numerical amounts that can be read, reproduced and subsequently sent. Such a written document may include data transmitted and stored in electronic form.

20) *Applicant* is a participant in a procedure who submits an application for the protection of rights.

## ***Principles of Public-Private Partnership and Concessions***

### **Article 5**

Regulating of conditions, manners and procedures for conclusion of public contracts is based on the following principles: protection of public interest, efficiency, transparency, equal and fair treatment, free market competition, proportionality, environmental protection, autonomy of will and equality of contracting parties.

While conducting the concession award procedures, the grantor shall, vis-à-vis all the participants in such procedure, apply the principle of free movement of goods, the principle of the free movement of services, the principle of non-discrimination and the principle of mutual recognition, in addition to the principles referred to in paragraph 1 of this Article.

The principles referred to in this Article are used for interpretation of provisions of this Law.

### ***Contents of Principles***

#### **Article 6**

*The principle of the protection of public interest* comprises the obligation of a public body to ensure that exercise of rights of private persons is not contrary to the legally defined public interest.

*The principle of efficiency* comprises the obligation to conduct the procedures for public contract concluding and selection of private partner within the time limits and in the manner prescribed by this Law and by the law regulating public procurements, while incurring the lowest possible costs incidental to such procedures.

*The principle of transparency* comprises the obligation to publicly announce the intention to conclude a public contract with or without elements of concession, the opportunity for the tenderer to inspect information on a conducted procedure for the award of public contracts, and the similar.

*The principle of equal and fair treatment* includes ban on discrimination regardless of the basis thereof among the participants in the procedure for the award of public contracts and for the selection of a private partner, as well as the obligation to provide to the participants in a private partner selection procedure complete and accurate information about the procedure, standards and criteria for the selection of a private partner.

Not a single participant in the procedure for the selection of a private partner shall have any advantage over other participants in respect of the time, information or access to the authorities and persons in charge of the procedure for the award of a public contract. The decisions shall be passed on the basis of the previously published and objective criteria, and shall be delivered to each participant in the selection procedure attached to the justification thereof.

*The principle of the free market competition* comprises the ban on restricting the competition among the participants and the obligation to accept all the participants with adequate technical, financial and other professional qualifications.

*The principle of proportionality* implies that each measure undertaken by a public authority, i.e. by another person, shall be limited to the necessary minimum and proportionate to the public interest aimed to be protected by such measure.

*The principle of environmental protection* includes the principles defined by the law regulating environmental protection, such as: the principle of integrality, the principle of prevention and precaution, the principle of preservation of natural values, sustainable development, the "polluter pays" principle, etc.

*The principle of autonomy of will* implies the freedom of the contracting parties to, in compliance with this law, the law regulating contracts and torts and other regulations and fair business practices, regulate their mutual rights and obligation at their own free will.

*The principle of equality of contracting parties* implies that the mutual relations of entities in a public contract are based on the equality thereof and on the equal rights of their wills.

## II PUBLIC-PRIVATE PARTNERSHIP

### 1. Notion of a Public-Private Partnership

#### Article 7

Public-private partnership (hereinafter: PPP), within the meaning of this Law, is a long-term cooperation between public and private partner for the purpose of providing financing, construction, reconstruction, management or maintenance of infrastructural and other facilities of public importance and provision of services of public importance, which may be either contractual or institutional.

Fundamental elements of a public-private partnership relate to:

- 1) The subject matter of a PPP, which may not be solely a commercial exploitation of resources in general use or of other resources or an exclusive supply of resources;
- 2) The form of a PPP that may either be an institutional PPP or a contractual PPP, or a concession that represents a special form of a PPP in compliance with this Law;
- 3) The obligation of the private partner to take over from the public partner the construction, i.e. reconstruction of public infrastructure, i.e. facilities of public significance, as well as the maintenance of public infrastructure, i.e. provision of services of public importance, with one or more obligations, such as: financing, management and maintenance, with the aim of providing services of public importance to final beneficiaries within the framework of the competences of the public partner, or with the aim of providing necessary preconditions to the public partner for the provision of services of public importance within the framework of its competences, or the provision of services of public importance within the framework of the competences of the public partner to the final beneficiaries;
- 4) Partial or complete financing of PPP projects by a private partner;
- 5) The option for a public partner to transfer certain rights in rem to a private partner in exchange for the undertaken obligations, or to award it a concession, or to make it a pecuniary payment for obligations undertaken, or to allow it to charge fees to end-users for services rendered, if so provided in the PPP project proposal/concession bylaw;
- 6) Assuming the responsibility by each individual partner for the risk that can be better managed, i.e. that can be influenced, or the risks are shared in a balanced proportion, all with a view to achieve optimum risk management during a PPP project term, with the use of managing, technical, financial and innovative capacities of the private partner, as well as by improving the exchange of skills and knowledge between the public and the private partner, and especially assuming the risk of demand or the risk of availability of a facility, service, infrastructure, and the similar;

7) The option available to a public partner to allow the private partner to conduct a commercial activity or to construct other facilities as a part of the PPP project realization, only in case where it is otherwise impossible to provide the required level of cost-effectiveness of a public-private partnership project realization and the return on invested funds.

In case referred to in paragraph 1, item 5) of this Article, where a public partner transfers certain rights in rem to the private partner, a relevant record shall be made in the register in which data on immovable property and rights thereon is maintained, that those rights were transferred for the purpose of the realization of a public contract.

## **2. PPP Forms**

### **2.1. Contractual PPP**

#### **Article 8**

The contracting parties stipulate in the public contract the mutual rights and obligations in the realization of a PPP project, with or without elements of concession, the content of which is laid down by Article 46 of this Law.

The public contract awarding the concession regulates the rights and obligations of concession grantor and concessionaire in compliance with the provisions of this Law and provisions of special regulations governing the field of the subject matter of the concession.

Provisions of the law regulating contracts and torts apply to the issues related to public contracts that are not specifically regulated by this Law.

### **2.2 Institutional PPP**

#### **Article 9**

An institutional PPP, with or without the elements of a concession, is based on the relation between a public and a private partner as members of a joint company that is in charge of the realization of a PPP project, where such relation may be based on founders' contributions to the newly established company or alternatively on the acquisition of an equity share, i.e. share capital increase of an existing company.

Founding and managing rights are regulated freely among the members of a joint company in compliance with the law regulating the status of companies.

A public body initiates the procedure for the selection of a private partner in the manner prescribed by the provision of Article 26 of this Law, i.e. prescribed by the provisions of this Law regulating the concession award procedure, by applying the criteria referred to in Article 21 of this Law.

Following the completed private partner selection procedure, the public body and the selected private partner conclude a public contract and a contract on establishment of a joint company referred to in Article 15 of this Law, with the aim of realizing a PPP project.

Provisions of the law regulating contracts and torts and of the law regulating the status of companies apply to the contents of the contract on establishment of a joint company referred to in paragraph 4 of this Article.

Provisions of the law regulating establishment and business operations of companies and provisions of the contract on establishment referred to in paragraph 5 of this Article apply to the joint company referred to in Article 15 of this Law.

The law regulating privatization ('put' and 'call' option) does not apply to the disposal of stakes or shares in the joint company in the manner as it was agreed in its establishment memorandums.

Provisions of this Law regulating the registration of public contracts and supervision of their realization also apply to the public contracts on institutional PPP.

## **3. Concession**

### **3.1. Notion of Concession**

#### **Article 10**

A concession, within the meaning of this Law, is a contractual or institutional PPP with the elements of a concession where a public contract regulates the commercial use of a natural resource, resource in general use that is in public ownership, or a resource owned by a public body, or conducting of an activity of general interest, that a public partner assigns to a private partner, for a definite period of time, under specially stipulated conditions, against payment of a concession fee by the private, i.e. public partner, whereas the private partner assumes the risk related to the commercial use of the subject matter of concession.

Special forms of a concession are the concession for public works and concession for public services.

A concession for public works, within the meaning of this Law, is a contractual relation identical to the contract on public procurement of works in compliance with the law regulating public procurements, except for the fact that the fee for public works comprises either of the right itself to commercial exploitation of executed works or alternatively of such right together with payment.

A concession for public services, within the meaning of this Law, is a contractual relation identical to the contract on public procurement of services in compliance with the law regulating public procurements, if the fee for services provided comprises either of the right itself to commercial exploitation, i.e. service provision, or alternatively of such right together with payment.

## **3.2. Subject Matter of Concession**

### **Article 11**

A concession may be awarded for the commercial exploitation of a natural resource, resource in public use that is public property, i.e. resource owned by a public body, or for conducting an activity of public interest, and specifically:

- 1) For exploration and exploitation of mineral raw materials and other geological resources;
- 2) For certain activities within the protected areas of nature, as well as for the exploitation of other protected natural resources;
- 3) In the field of energy;
- 4) For ports;
- 5) For public roads;
- 6) For public transportation;
- 7) For airports;
- 8) In the fields of sports and education;
- 9) On cultural resources;
- 10) For utility services;
- 11) In the field of railways;
- 12) For the commercial exploitation of cableways;
- 13) In the field of healthcare;
- 14) In the field of tourism;
- 15) As well as in other fields.

Except for the issues related to the procedure, all other issues of significance for awarding a concession for individual field or activity referred to in paragraph 1 of this Article may be regulated by a special law regulating the field or the activity in question.

## **4. Public Partner**

### **4.1. Public Body and its Powers**

#### **Article 12**

Public bodies are entitled to independently initiate the procedure for a PPP project realization within their jurisdiction.

Public bodies are entitled to conclude public contracts with all legal or natural persons, as well as to conclude ancillary or related agreements.

## **4.2. A Public Body as a Concession Grantor**

### **Article 13**

Public body is entitled to independently initiate a PPP project realization procedure with elements of concession for the exploitation of a natural resource, resource in public use which is in public ownership, i.e. resource owned by a public body or for conducting an activity of public interest within its respective jurisdiction.

A concession grantor may be:

- 1) Government, on behalf of the Republic of Serbia, where the public bodies and the subject matter of the concession are within the jurisdiction of the Republic of Serbia;
- 2) Government of an autonomous province, on behalf of the autonomous province, where the public bodies and the subject matter of the concession are within the jurisdiction of the autonomous province;
- 3) Assembly of a local government unit, where the public bodies and the subject matter of the concession are within the jurisdiction of the local government unit;
- 4) Public enterprise;
- 5) Legal person authorized by special regulations to grant concession.

## **5. Private Partner**

### **5.1. Legal and Natural Person**

#### **Article 14**

Any domestic or foreign natural, i.e. legal person may be a participant in the public contract award procedure may be.

Groups of persons referred to in paragraph 1 of this Article may submit tenders or act as participants in a procedure. Public bodies *are not entitled to require*\* from these groups of persons to have a specific legal form in order to participate in a procedure.

All the participants in a procedure whose tender is assessed as the most advantageous shall be required to assume a specific legal form once they have been awarded the contract.

### **5.2. Special Purpose Vehicle**

#### **Article 15**

SPV shall be established for the purpose of a public contract realization, except if the PPP project proposal, i.e. concession by-law stipulates otherwise, and may participate exclusively in the implementation of PPP project/concession for the purpose of which it has been established.

SPV is established in compliance with the provisions of the law regulating the status of companies.

### **5.3. Consortium as Participant in Public Contract Award Procedure**

#### **Article 16**

Establishing of a consortium for the purpose of participation in a public contract award procedure is allowed, except where the public body conducting the procedure has expressly envisaged otherwise in the tender dossier for some objective reasons.

If there are objective reasons for doing that, a public body may:

- 1) Limit the number of consortium members or envisage restrictions in respect of consortium structure and responsibilities of its members;
- 2) Restrict modifications in consortium structure, such as consortium members' replacement, adding tenderers to a consortium or mergers of consortiums or dissolution of consortiums;
- 3) Restrict changes in subcontractors whose capacities are needed by the tenderer or consortium in order to fulfill the selection criteria.

The restrictions referred to in paragraph 2 of this Article shall be specified in the public invitation or in the tender dossier.

Each of the members of the consortium may directly or indirectly participate in one consortium only at a time.

A consortium member referred to in paragraph 4 of this Article may not participate in an award procedure as an independent candidate or tenderer. Any non-compliance with this rule leads to disqualification of all the consortiums in which such member participates, and to the disqualification of that member if it participates independently.

On the occasion of examining qualifications of a consortium, the contracting authority examines the capabilities of each consortium member and evaluates whether the consortium qualifications taken jointly are sufficient and adequate to comply with the selection criteria.

A consortium contract may include provisions on limitation of liability of individual consortium members, while at least one consortium member shall be unlimitedly liable, unless required otherwise by the public body in compliance with paragraph 2, item 1) of this Article.

The limitation of liability referred to in paragraph 7 of this Article, in case where the consortium tender is accepted, binds the public body.

## **5.4. Subcontracting**

### **Article 17**

In the tender dossier and in the draft public contract, the public body may require from the tenderer to indicate in its bid the part of the contract value in percentages for which it intends to conclude a contract with subcontractors.

Subcontracting is possible only if the proposed subcontractor meets the conditions determined by the public body in the tender dossier and the conditions prescribed by applicable regulations for conducting the professional activity in respect of the economic and financial standing, as well as technical and/or professional competence for performance of its share of contractual obligations.

In case of subcontracting, the private partner has unlimited joint and several liability for execution of the contractual obligations of the subcontractor.

If subcontracting is not indicated in the bid in the manner referred to in paragraph 1 of this Article, the contract with subcontractor may not be concluded without prior consent of the public partner.

## **5.5. Term of a Public Contract**

### **Article 18**

The term for which a public contract is concluded is determined in such a manner as not to restrict the market competition beyond what is necessary to secure usage of the private partner's investment and a reasonable return on the invested capital, while at the same time taking into account the risk related to the commercial exploitation of the subject matter of such contract.

The term referred to in paragraph 1 of this Article may not be shorter than five years or longer than 50 years, with the option to conclude a new contract upon the expiry of the contracted term with the selection of a private partner in the manner and following the procedure prescribed by this Law.

Where a concession is awarded by public contract, the term is determined in compliance with this Law, except where the term for which the concession is awarded is specified by a special regulation governing the field of the subject matter of the concession.

The term referred to in paragraph 2 of this Article starts running from the day of signing of the public contract, unless otherwise prescribed by the public contract, i.e. tender dossier.

The term for which the public contract is concluded may not be extended, except in the case where the private partner, without any fault from its part, has been prevented from carrying out its contractual obligations.

## **6. Proposal by Interested Persons for Realization of PPP Projects**

### **Article 19**

The public body is entitled to consider and accept a proposal of persons interested in the realization of PPP projects with or without elements of concession, by following the procedure envisaged in this Article, providing that such proposals do not pertain to a project for which a public contract award procedure has already been initiated or a public invitation has been published.

On the occasion of submitting the unsolicited proposal, the person submitting such unsolicited proposal notifies the public body of the value of the produced documentation, which the public body shall compensate if the contract is awarded to a person who did not submit the unsolicited proposal.

Within a term of 90 days from the receipt of a concrete unsolicited proposal, the public body determines whether it considers the project to be in the public interest and thus notifies the party submitting the proposal. The public body is entitled to discuss each aspect of the project proposed by the party submitting the proposal, including the justification of costs of documentation production referred to in paragraph 2 of this Article.

If the unsolicited proposal is considered to be in public interest and if the public body decides to launch such project, that body acts in compliance with the procedure envisaged in Article 26 of this Law, i.e. with the provisions of this Law regulating the concession award procedure. If the public contract award procedure is initiated for the proposed PPP, with or without the elements of concession, the public body indicates in the public invitation that the project is launched by the private parties that submitted the proposal.

The party submitting the proposal is entitled to participate in the contract award procedure if its participation in project proposal preparation does not distort competition.

If the person referred to in paragraph 5 of this Article has a competitive advantage, the public body provides any information necessary to counterbalance any such advantage to all other interested persons or tenderers.

If the competitive advantage cannot be counterbalanced, the person referred to in paragraph 5 of this Article shall be excluded from the public contract award procedure.

## **III PROCEDURE AND METHOD OF AWARDING PUBLIC CONTRACT**

### ***Types of Procedures***

#### **Article 20**

The private partner selection procedure is either a public procurement procedure laid down in the law regulating public procurements, or the concession award procedure laid down by this Law.

The public contract is concluded as a contract on public-private partnership or as a concession contract.

If the realization of PPP projects includes the award of concession referred to in Article 10, paragraph 1 of this Law, the private partner selection procedure is conducted in compliance with the provisions of this Law.

If the concession that is awarded is a special form of a concession for public works, i.e. for public services in accordance with Article 10, paras. 2, 3 and 4 of this Law, the public procurement procedures prescribed by the law regulating public procurements apply to the concessionaire/private partner selection procedure.

The provisions of the law that regulates public procurement which relate to the following do not apply in the procedure of selection of the private partner:

- (1) Manner of calculating the estimated value of the public contract;
- (2) Joint bid;

- (3) Subcontractors;
- (4) Deadlines for submission of offers and applications;
- (5) Deadlines that relate to making a decision on selection of the best bid;
- (6) Deadlines for concluding a contract;
- (7) Amendments to the public contract.

If the public body hires advisors for the purpose of the PPP project realization, the law regulating public procurements applies to the selection thereof.

### ***Selection and Value Calculation Criteria***

#### **Article 21**

Selection criteria prescribed by the law regulating public procurements apply to the selection of a private partner, except for the provisions thereof regulating the advantage of the domestic tenderers' vis-à-vis the foreign ones.

In the application of criteria referred to in paragraph 1 of this Article, the price is considered to be the present net value that pertains to the total costs over the contracted period exclusive of the value added tax.

Calculation of the estimated value of a public contract is based on the total value, according to the estimate made by the public body, where the estimated total amount is taken into account, inclusive of possible options and allowed changes that appear in the period of duration of the public contract.

Relevant provisions of the law regulating public procurements apply to the estimate of value of the concession for public services inclusive of the right to exploitation of services and concession for public works.

The estimate of the value of a concession awarded in compliance with this Law is determined in compliance with this Law and other regulations.

### ***Publishing of a Public Invitation***

#### **Article 22**

Procedure of awarding public contract for PPP, with or without elements of concession, is initiated by publishing of a public invitation in Serbian and in a foreign language that is customarily used in international trade.

The public invitation is published with the identical text in the "Official Herald of the Republic of Serbia", as well as in a public media distributed in the whole territory of the Republic of Serbia, on the internet page of the public body and on the public procurement portal, inclusive of the indication of the day of publication of such public invitation in the "Official Herald of the Republic of Serbia".

The public invitation is published, if needed, in the electronic form on the internet page of Tenders Electronic Daily, the online edition of the supplement to the Official Journal of the European Union, and mandatorily for the projects worth more than five million Euros.

The public invitation publishing costs are borne by the competent public body that conducts the procedure.

### ***Time Limits for Receipt of Tenders and Applications***

#### **Article 23**

On the occasion of specifying the time limits for the receipt of tenders and applications for participation, the public bodies in particular take into account the complexity of the public contract and the time required for drawing up tender, in order to envisage an adequate time limit.

If the procedure of selection of the private partner is conducted in accordance with the provisions of the law that regulates public procurements, the following time limits are considered to be adequate and may not be shorter than:

1) In an open procedure, the shortest time limit for the receipt of tenders is 52 days from the public invitation publishing date.

2) In case of procedures conducted by the holder of exclusive rights who is performing the works, within the meaning of the law regulating public procurements, as well as in case of a restrictive procedure, negotiating procedure with publication of a public invitation and competitive dialogue conducted by a public body:

(1) The shortest time limit for the receipt of tenders or applications for participation in a restrictive procedure is 37 days from the date of dispatching of the public invitation;

(2) In cases of restrictive procedures, the shortest time limit for the receipt of tenders is 40 days from the date of publishing of the public invitation.

## ***Confidentiality and Secrecy***

### **Article 24**

The public body shall preserve confidentiality of all the technical, economic, financial and other data from a delivered tender.

Unless envisaged otherwise by the law or a court decision or tender dossier, neither party in negotiations may reveal to a third party the technical elements, elements of price or any other elements in relation to the discussions, communication or negotiations based on the above cited provisions without obtaining consent from the other party.

Provisions of the law regulating public procurements apply to confidentiality of documentation in public contract award procedures.

## ***Thresholds***

### **Article 25**

This Law applies to all public contracts that are not exempt and whose estimated value, exclusive of the value added tax (VAT), is equal or higher than the thresholds below which the public bodies are not obliged to apply the law regulating public procurements.

## ***1. Initiating Procedures for Realization of PPP Projects without Elements of Concession***

### **1.1. Proposing of PPP Projects without Elements of Concession**

#### **Article 26**

The public body submits a PPP project proposal for giving approval and adoption to the following authorities in charge of approval of projects:

1) The Government, if the public partner is the Republic of Serbia or another public body of the Republic of Serbia;

2) The Government of the Autonomous Province, if the public partner is the Autonomous Province or another public body of that Autonomous Province;

3) The assembly of the local government unit, if the public partner is the local government unit or another public body of that local government unit.

### **1.2. Content of a PPP Project Proposal**

#### **Article 27**

A PPP project proposal includes:

1) Subject matter of the proposed PPP, the indication of the geographical area in which the PPP activity would be conducted and objectives within the public tasks to be achieved by the project;

2) Business plan, including the PPP conditions, estimate of costs, and value-for-money analysis (in compliance with the Methodology adopted by the Commission for PPP), specification on financial acceptability of the PPP for the public body, specification related to project financing (from the budget,

financing by the international financial institutions, private financing and financing price) and availability of funding, planned allocation of risks;

3) Analysis of the economic efficiency of the proposed project;

3a) Financial effects of the proposed project on the budget of the Republic of Serbia, i.e. budget of the autonomous province or budget of the local government unit during the life-cycle of project term;

4) Types and amounts of collateral that the project partners should provide;

5) Brief overview of conditions, requirements and methods for ensuring infrastructure and services for beneficiaries by the private partner, such as the project quality, specifications of results for services or level of prices, and similar;

6) Information on the award procedure, especially on the selection and award criteria, selected award procedure, overview of the contents of the public contract in compliance with Article 46 of this Law;

7) Requirements in the field of environmental protection, in respect of the conditions for work, security and health protection and safety of employees hired by the private partner;

8) Planned dynamics of project development, from the award procedure to the beginning of service provision or putting into service of facilities or other infrastructure;

9) Project team of the public body that will monitor the entire project and perform the function of the tender commission that conducts the selection of tenderers, i.e. the most economically advantageous tender, including the external advisors.

The party submitting the project proposal acquires approvals, independently or through the competent public body, for the material used to propose the concrete PPP project to the body for PPP project approval.

During the procedure for obtaining approval, the project proposal is also delivered to the Commission for Public-Private Partnership in order to obtain opinion and assessment on whether the project in question can be realized in the form of PPP.

If the Republic of Serbia, i.e. public body of the Republic of Serbia is the party proposing a public-private partnership project and if the estimated value of such project exceeds EUR 50 million, the Commission for PPP, prior to passing their opinion, shall obtain the opinion of the Ministry in charge of finances.

If the authority in charge of approval referred to in Article 26 of this Law, within a term of three months neither approves the project proposal nor requires amendments thereof, it is considered that the proposal has not been approved.

### **1.3. Commencement of Procedure**

#### **Article 28**

Upon the approval of project proposal by the authority in charge of approval referred to in Article 26 of this Law, the public body initiates the public procurement procedure for the selection of a private partner, in compliance with the law regulating public procurements.

### ***2. Initiating Procedure for Realization of Public-Private Partnership Project with Elements of Concession***

#### **2.1. Proposal for the Adoption of a Concession Bylaw**

#### **Article 29**

The public body, prior to drawing up a proposal for the adoption of a concession bylaw, designates an expert team for drafting of tender dossier which makes an estimate of the value of concession, drafts the feasibility study for concession awarding and undertakes all other activities that precede the concession award procedure in compliance with the provisions of this Law and special regulations governing in greater detail the field of the subject matter of the concession (hereinafter: the Expert Team of the public body).

Based on the economic, financial, social and other indicators and environmental impact assessment of the concession activity, the competent public body prepares the proposal for the adoption of a concession bylaw and delivers it for adoption to:

1) The Government, if the concession grantor is the Republic of Serbia, when the public bodies and the subject matter of the concession are within the jurisdiction of the Republic of Serbia;

2) The government of the autonomous province, if the concession grantor is the autonomous province, when the public bodies and the subject matter of the concession are within the jurisdiction of that autonomous province;

3) The assembly of the local government unit, if the local government unit is the concession grantor, when the public bodies and the subject matter of the concession are within the jurisdiction of that local government unit.

When the concession grantor is a public body, public enterprise or a legal person authorized by special regulations to grant a concession, the concession by-law is adopted by an adequate body referred to in paragraph 2, items 1) to 3) of this Article depending on the fact in whose jurisdiction is such a concession grantor.

During the concession bylaw adoption procedure, the proposal of the concession bylaw is also delivered to the Commission for PPP in order to obtain its opinion and assessment on whether the concrete project can be realized in the form of a PPP with elements of concession.

If the Republic of Serbia is the concession grantor, i.e. when the public bodies and the subject matter of the concession are within the jurisdiction of the Republic of Serbia and if the estimated value of that concession exceeds EUR 50 million, the Commission for PPP, prior to passing its opinion, shall obtain the opinion of the ministry in charge of finances.

The proposal referred to in paragraph 2 of this Article contains:

1) Subject matter of the concession;

2) Reasons for awarding the concession;

3) Any withdrawal of the conferred tasks and revocation of the right to exploit the assets in order to conduct the conferred tasks;

4) Data on the impact of the concession activity on the environment, infrastructure and other economic sectors, on the efficient functioning of the technical and technological systems;

5) Minimum technical, financial qualifications and professional experience that a participant in the procedure must possess in order to be allowed to take part in the concessionaire selection and negotiation procedures;

6) Term of the concession, including the justification of the proposed term;

7) Data on necessary pecuniary and other means and the investment dynamics thereof, manner of payment, issuing of guarantees or other security instruments for the performance of concession obligations, concessionaire's rights and obligation vis-à-vis beneficiaries of services that are the subject matter of the concession and issues related to the submission of objections by such beneficiaries, the issues of conditions and method of supervision, and prices and general conditions for the exploitation of resources and conducting of concession activity;

8) Data on fees paid by the concession grantor and concessionaire;

9) Assessment of the required number of jobs and qualified workforce in relation to the execution of concession, if that is proposed to be an element of the concession bylaw;

10) Data on other contracts concluded before, concurrently or after conclusion of the public contract, either in the form of an appendix of the public contract, or as separate contracts, for the purpose of economic justifiability or commercial needs of the relevant project, such as the contracts on transfer of the right to use immovable and movable objects, transfer i.e. assignment to the concessionaire of the contract concluded by a public body, takeover of employees, etc;

11) Other data and documents of importance for the concession.

Upon the adoption of the proposal for the adoption of the concession bylaw by the authority referred to in paragraph 2 of this Article, the proposed concession bylaw becomes the concession bylaw comprising of all the elements referred to in paragraph 6 of this Article.

*Opinion of the Ministry in Charge of Finances*

## **Article 29a**

The Commission for PPP issues a positive opinion on the proposal of the public-private partnership project, i.e. on the proposal of the concession bylaw providing that the criteria in compliance with this Law have been fulfilled, and in cases referred to in Article 27, paragraph 4 and Article 29, paragraph 4 of this Law, the Commission for PPP provides the opinion by additionally taking into account the previously obtained opinion of the ministry in charge of finances.

The Commission for PPP delivers the proposal of the project of a public-private partnership, i.e. the proposal of the concession act, in order to obtain the opinion, to the ministry in charge of finances, following the receipt of the proposal by the competent public body.

The ministry in charge of finances provides the opinion based on the fact whether the direct financial liabilities of the public body contained in the project proposal for the public-private partnership, i.e., draft concession bylaw, are harmonized with the budget and fiscal projections, conditions and limitations laid down by specific regulations.

The direct financial liabilities referred to in paragraph 3 of this Article are the pecuniary fees envisaged to be paid by the public body for the purpose of project realization, in relation to the financing according to the traditional (budget) model.

### *Expert Team of the Public Body*

## **Article 30**

The tasks of the Expert Team of the public body are as follows:

- 1) Provision of expert assistance to the public body in preparation of the necessary analyses, i.e. feasibility studies for concession awarding, in preparation and drawing up of the conditions and tender dossier, rules and criteria for the assessment of tenderers and received tenders, as well as the tender selection criteria;
- 2) Examining and assessment of the received tenders;
- 3) Determining the proposal of the decision on the selection of the most advantageous tender for the award of concession or the proposal of the decision on cancellation of a concession award procedure, with reasons for such proposals;
- 4) Performing of other tasks required for the realization of a concession award procedure.

The Expert Team for concessions keep minutes of its work and draws up other documents signed by all the members of the Expert Team.

### *Feasibility Study for Concession Awarding*

## **Article 31**

During the drafting of the feasibility study for concession awarding, the public body especially takes into account the public interest, environmental impact, conditions of work, protection of nature and of cultural property, financial effects of the concession on the budget of the Republic of Serbia, i.e. budget of the autonomous province and budget of the local government unit.

### *Project Analysis*

## **Article 32**

In conducting the analysis procedure referred to in Article 30, paragraph 1, item 1) of this Law, the Expert Team of the public body cooperates with the Commission for PPP.

If the Expert Team should determine, based on the analysis, that it is a case of a straightforward PPP project without elements of concession, relevant provisions of this Law regulating PPP in the part pertaining to proposing and approval of the PPP projects apply.

## **Article 33**

Upon the adoption of the concession bylaw by the authorities referred to in Article 29 of this Law, the concession award procedure begins on the public invitation publishing day in the "Official Herald of the Republic of Serbia", and it ends with the passing of the final decision on the selection of the most

advantageous tender or with the passing of the final decision on cancellation of the concession award procedure.

Issues pertaining to awarding concession for public services and commercial use of the resources in public use or other resources not regulated by this Law may be regulated in greater detail by means of a special law, with mandatory complying with the principles referred to in Articles 5 and 6 of this Law.

### *Tender Dossier*

#### **Article 34**

The tender dossier comprises of the form of the tender, tender contents, tender validity term, description of the subject matter of the concession (technical and other specifications), draft public contract on concession or essential elements thereof, conditions and proof that the tenderers shall deliver with the tender as evidence of their capacities for project realization, the requirement to deliver the complete list of affiliated undertakings, deadline for passing of the decision on the selection of most advantageous tender, as well as all other requirements that a tenderer must fulfill.

If, based on a special regulation, the concession grantor or another public body is entitled to determine the price paid by the final beneficiaries to the concessionaire for its services or to grant approval to the concessionaire for the pricelist for its public services, such right, as an integral part of the provisions of the public contract on concession which is the subject matter of the award procedure, should be included as an integral part of the tender dossier.

The description of the subject matter of the concession (technical and other specifications) may not be defined in a manner which restricts the market competition while conducting the concession award procedure.

Tender dossier shall be drawn up in such a manner as to allow comparability of tenders for acquiring the concession in question.

The concession grantor may specify in the tender dossier the bodies that may provide to the legal, i.e. natural person that has the interest to participate in the concession award procedure information on obligations related to taxes, contributions and other public revenues, to environmental protection, protection of natural resources and cultural property, energy efficiency, provisions on occupational protection and on the conditions at work that are in force in the area in which the activity indicated in the public contract on concession shall be conducted.

During the concession award procedure, each legal, i.e. natural person that has the interest to take part in the concession award procedure is given an opportunity, under equal conditions, to inspect the tender dossier necessary to draw up the tender or to purchase it.

The concession grantor shall specify in advance the fee for the inspection or purchase of tender dossier necessary for drawing up of a tender.

The fee referred to in paragraph 7 of this Article is the revenue of the budget of the Republic of Serbia, i.e. the budget of the autonomous province or the budget of the local government unit, and other public body, in cases where they are the concession grantors.

Data on legal and/or natural persons that ask for access to the dossier or purchase the dossier are kept as secret in compliance with Article 24 of this Law.

Relevant provisions of the law regulating public procurements apply to any other issues pertaining to the contents of the tender dossier in case of awarding concession for public works, i.e. public services.

### *Public Invitation for Concession Award*

#### **Article 35**

The concession grantor initiates the procedure for awarding the public contract on PPP with elements of concession by publishing a public invitation.

The public invitation shall include the following information:

- 1) Contact information of the concession grantor;
- 2) Subject matter of the concession, including the nature and extent of the concession activity, the location where the concession activity is to be conducted and the duration of the concession;

- 3) Deadline for the submission of tenders, address to which tenders are to be delivered, language and alphabet in which tenders are to be drawn up;
- 4) Personal, professional, technical and financial criteria that the tenderers must fulfill, as well as documents to prove compliance thereto;
- 5) Criteria for the selection of the most advantageous tender;
- 6) Delivery date for notices on the outcome of the procedure;
- 7) Name and address of the body competent to handle applications for the protection of rights, as well as information on deadlines for the submission thereof;
- 8) Other data of importance for the procedure of granting concession.

The public invitation shall indicate whether the concession is granted in accordance with Art. 35-41 of this Law or in accordance with the Article 41a of this Law.

The public invitation includes the information on the type of procedure based on which the concession award is conducted (with or without prequalification).

The public invitation may additionally include other information in compliance with a special law.

The public invitation is published in compliance with Article 22 of this Law.

### *Delivery of Tenders*

#### **Article 36**

Tenders are delivered in written form in sealed envelope bearing the address of the concession grantor, indication of the concession award procedure to which it pertains, indication "Do Not Open" and tenderer's address.

Tender is binding for the tenderer that submitted the tender prior to expiry of the deadline for the submission of tenders.

Within the duration of the term for submission of a tender, a tenderer may modify and amend its tender, in the manner prescribed for the submission of tenders.

### *Term for Submission of Tenders*

#### **Article 37**

Term for the submission of tenders amounts to at least 60 days from the day of publishing of the public invitation in the "Official Herald of the Republic of Serbia".

### *Bid Bond*

#### **Article 38**

Prior to the beginning of a concession award procedure, the concession grantor shall specify in tender dossier and in the public invitation the obligation of a tenderer to deliver a bank guarantee (hereinafter: the guarantee) as the bid bond, unconditional, irrevocable, without protest and payable at first call, which shall be submitted with the bid.

The type and amount of the guarantees is determined depending on the specific characteristics of individual type of the concession, in compliance with the assessment made by the concession grantor and in compliance with the special regulations governing such issues.

The Expert Team referred to in Article 30 of this Law proposes the type and the amount of specific guarantees.

The concession grantor shall specify the amount of the bid bond as an absolute value. The bid bond may not exceed 5% of the estimated concession value.

The bid bond, if unused, shall be returned at the latest within a term of 10 days from the day of rendering of the decision on the selection of the most advantageous bid, i.e. decision on cancellation of the concession award procedure.

The bid bond shall be returned immediately if the tender is not considered during the selection.

Provisions of the law regulating public procurements shall apply to all issues related to bid bond in awarding concessions for works and concessions for services in compliance with Article 10, paras. 2, 3 and 4 of this Law.

### *Criteria for the Selection of Most Advantageous Tender*

#### **Article 39**

Criteria based on which the concession grantor selects the most advantageous tender are as follows:

- 1) In case of the most economically advantageous tender from the point of view of the concession grantor, criteria related to the subject matter of the concession, such as: quality, fee amount, price, technical solution, aesthetical, functional and ecological characteristics, price of the service provided for the end users, operating costs, cost-effectiveness, servicing after the handover and technical assistance, delivery date and delivery deadlines or deadlines for the completion of works, or
- 2) The highest concession fee offered.

In cases where the most advantageous tender is selected based on the criteria of the most economically advantageous tender, the concession grantor specifies, in the tender dossier and in the public invitation, all the tender selection criteria it envisages to be applied in relation to the relative meaning it attaches to them.

The meaning of criteria may be expressed by specifying a series of maximum values within a relevant range. If that is not possible due to some duly justifiable reasons, the concession grantor lists the criteria in the public invitation according to their significance, from the most significant to the least significant one.

The concession grantor shall specify, define and, on the occasion of the assessment of concession feasibility, additionally apply criteria laid down by special regulations, which are indicative of the long-term viability of a tenderer during the concession realization within the prescribed term to which the concession is awarded.

### *Decision on the Selection of the Most Advantageous Tender*

#### **Article 40**

The concession grantor renders a decision on the selection of the most advantageous tender for which it shall offer the signing of a public contract on concession.

The concession grantor shall deliver the decision on the selection of the most advantageous tender with a copy of the minutes on tenders' opening and evaluation, without delay, to each tenderer, by registered mail with advice of delivery or in some other manner which proves the delivery.

Copy of the minutes on tenders' opening and evaluation may not violate the provisions of the law regulating the protection of confidentiality of data and documentation.

The concession grantor may not sign a public contract on concession prior to expiry of the standstill period, which lasts for 15 days from the day of delivery of the decision on the selection of the most advantageous tender to each tenderer.

Upon expiry of the standstill period referred to in paragraph 4 of this Article, signing of a public contract on concession between the concession grantor and the selected tenderer is allowed, providing that no application for the protection of rights has been submitted.

If the legal redress procedure has been initiated by means of an application for the protection of rights, the public contract on concession may be concluded following a decision on dismissal, i.e. on rejection of the application for the protection of rights, in compliance with the law regulating public procurements.

### *Term for Passing of Decision on the Selection of the Most Advantageous Tender*

#### **Article 41**

The time limit for passing of a decision on the selection of most advantageous tender shall be adequate, and it shall begin to run on the day of expiry of the term for submission of tenders. Unless specified otherwise in the tender dossier, the term for passing of the decision on the selection of the most advantageous tender is 60 days.

A tenderer may extend the term of validity of its tender, upon request by the concession grantor.

In case that the concession grantor does not pass a decision on the most advantageous tender and if it fails to deliver it to the tenderers within the prescribed time limit, the tenderers may submit an application for the protection of rights, in compliance with the law regulating public procurements.

### **Article 41a**

In the event that the estimated value of the concession is more than 50 million Euros, a public body may adopt a decision to implement the procedure of concession granting in phases, provided that this is stipulated in the concession by-law.

The manner of giving concessions in phases referred to in paragraph 1 of this Article is prescribed in detail by the Government.

### *Contents of Decision on Selection of the Most Advantageous Tender*

### **Article 42**

The decision on the selection of the most advantageous tender includes:

- 1) Name of the concession grantor with the number and date of the decision rendering;
- 2) Name of the tenderer;
- 3) Subject matter of the concession;
- 4) Nature, extent and place where the concession activity is to be conducted;
- 5) Duration of concession;
- 5a) Type of the implemented procedure;
- 5b) Number of received bids;
- 5c) Implemented criterion of selection;
- 6) Special conditions that the concessionaire should fulfill during the concession period;
- 7) Concession fee amount or the basis for determining the concession fee amount that is to be paid by the concessionaire or by the grantor;
- 8) Time limit within which the most advantageous tenderer shall sign a public contract on concession with the concession grantor;
- 9) Time limit within which the concession grantor may invite other tenderers to sign the concession contract in case that the most advantageous tenderer should fail to sign the contract, as well as the obligation to extend the validity period of the binding tender and validity term of the bank guarantee provided as bid bond;
- 10) Justification of reasons for the selection of the best bid;
- 11) Advice on legal remedy;
- 12) Signature of the responsible person and stamp of the concession grantor.

A decision on the selection of the most advantageous tender may additionally include other information of relevance in compliance with the tender dossier, the tender submitted, as well as with the provisions of special regulations governing the field of the subject matter of the concession.

### *Concession Fee*

### **Article 43**

The concessionaire, i.e. the concession grantor shall pay pecuniary concession fee in the amount and in the manner regulated by the public contract on concession, except in cases where the payment of a concession fee is not economically justified.

The concession fee shall additionally include the fee for the exploitation of the specific resource in public use as stipulated by the law regulating the exploitation of the resource in question, fee for exploitation of the

resource owned by a public body, as well as other kinds of public revenues related to the exploitation of such resource, except property tax.

The pecuniary concession fee may be agreed as a regular equal amount, i.e. as a variable amount, depending on the specific characteristics of individual concession type.

The concession fee amount is determined depending on the type of the natural resource, type of activity, duration of the concession, operating risk and expected profit, equipment level and surface area of the resource in public use, i.e. public resource, i.e. resource owned by a public body.

The public contract on concession may specify the modification of the concession fee amount in a specified period of time, during the term of the public contract on concession, which shall be indicated in the tender dossier.

In cases where the concession fee is paid by the concessionaire, such concession fee shall be the revenue of the budget of the Republic of Serbia, i.e. of the budget of the autonomous province or of the local government unit, i.e. revenue of the public body which grants the concession, and in case where the concession fee includes the fee or other public revenue, except property tax, referred to in paragraph 2 of this Article, such funds are allocated and used for the purposes defined in compliance with the law regulating the exploitation of the resource in question.

The fee included in the concession fee referred to in paragraph 2 of this Article may not be lower than the amount determined in compliance with the law regulating the exploitation of the resource in question or other public revenue, except property tax, related to the exploitation of that resource.

#### *Decision on Cancellation of Concession Award Procedure*

#### **Article 44**

The concession grantor cancels the concession award procedure upon expiry of the time limit for the submission of tenders in the following cases:

- 1) In case of a disclosure of circumstances which, had they been known prior to initiating of the concession award procedure, would have led to withholding from publishing of such public invitation, or to a public invitation that is in some material respects different in its content;
- 2) If, by the expiry of the time limit for the submission of tenders, not a single tender has been delivered;
- 3) If, after the exclusion of tenders in the concession award procedure, not a single acceptable tender has remained;
- 4) If, based on the criteria for the selection of the most advantageous tender, a selection cannot be made.

The concession grantor may cancel the concession award procedure if by the expiry of the time limit for the delivery of tenders only one tender has been received, i.e. if upon the exclusion of tenders in the concession award procedure only one acceptable tender has remained.

In case of existence of reasons presented in paragraphs 1 and 2 of this Article, the decision on cancellation of the concession award procedure is passed by the concession grantor.

The decision on cancellation of the concession award procedure, with a copy of the minutes on tenders' opening and evaluation, shall be delivered by the concession grantor to each tenderer without any delay, by registered mail with advice of delivery or in some other manner that allows for proof of delivery.

The new concession award procedure may be initiated upon expiry of the time limit for submission of applications for the protection of rights, i.e. upon passing of a decision on dismissal, i.e. on rejection of the application for the protection of rights, in compliance with the law regulating public procurements.

## **IV PUBLIC CONTRACT**

### ***Public Contracts Covering a Number of Subject Matters***

#### **Article 45**

Rules applicable to the subject matter for the realization of which the public contract has been primarily intended apply to the public contract that should include a number of subject matters.

The choice between the award of a single contract and the award of a number of separate contracts may not be made with the aim of excluding the implementation of this Law.

### ***Contents of a Public Contract***

#### **Article 46**

The public contract contains all the provisions, terms and other clauses that the public partner considers useful for completion of the task of the private partner and for the relation of the private partner with other participants with significant roles in the realization of a PPP with or without elements of concession.

On the occasion of laying down the provisions and terms of a public contract, the public partner regulates the following issues:

- 1) The character and extent of works that the private partner should perform and/or services that the private partner should provide and conditions for ensuring thereof, providing that they are indicated in the public invitation;
- 2) Allocation of risks between the public and the private partner;
- 3) Provisions on the minimum required quality and standard of services and works in the interest of the general public or service beneficiaries or public facilities, as well as the consequences of any failure to comply with such requirements in respect of quality, providing that these do not imply an increase or a decrease of the fee of the private partner referred to in item 9) of this paragraph;
- 4) The scope of exclusive rights of the private partner, if applicable;
- 5) Any assistance that the public partner may provide to the private partner in obtaining permits and approvals required for the realization of a PPP or a concession;
- 6) Requirements in relation to the SPV in respect of: the legal form, establishment, minimum capital and minimum other means or human resources, shareholders' structure, organizational structure and business premises, as well as the business activities of the SPV;
- 7) Ownership of the resources pertaining to the project and, where necessary, the obligations of the contracting parties in respect of acquiring the project funding and any easements if required;
- 8) The amount and method of calculation of the concession fee, where applicable;
- 9) The fee to the private partner, regardless of whether it consists of remunerations or fees for the facilities or services provided, method and formula for fixing, periodical harmonization and adjustments of such remunerations or fees, any payments that the public partner should effectuate to the private partner;
- 10) Mechanisms for the reduction of fee (regardless of the legal form) of the private partner in case of the substandard quality of its services/facilities;
- 11) Procedure employed by the public partner to examine and approve the projects, construction plans and specifications, as well as the procedures for testing and final inspection, approval and acceptance of an infrastructural facility as well as of the services provided, where necessary;
- 12) Procedures for modification of designs, construction plans and specifications if unilaterally determined by the public partner and procedures for granting approval for any extension of deadlines and/or increases of the fee (including the costs of financing);
- 13) The extent of the obligation of the private partner to, depending on the case, provide for the modification of facilities or services during the term of the contract in order to satisfy the changed actual demand for the service, its continuity and its provision under the essentially same conditions to all the users, as well as the consequences thereof to the private partner's fee (and the costs of financing);
- 14) Possible extent of amendments to the public contract following its conclusion, persons entitled to require such amendments and the mechanism for harmonization of such amendments;
- 15) Any rights of the public partner to allow the private partner to conclude the most important subcontracting agreements or the agreements with subsidiary companies of the private partner or with other related parties or other agreements whereby the private partner entrusts the performance of certain tasks to third parties, if such entrusting is provided for in the PPP project proposal, i.e. concession by-law;
- 16) Sureties that should be provided by the private partner or by the public partner (including the sureties of the public partner to financiers) or other manners of securing payment;

- 17) Insurance coverage that should be provided by the private partner;
- 18) Available legal remedies in case of non-performance of contractual obligations by any contracting party;
- 19) Degree to which any contracting party may be exempt from the liability for non- performance or delay in execution of contractual obligations due to the circumstances that are objectively beyond their control (force majeure, amendment to a law, etc.);
- 20) The term of the public contract and the rights and obligations of contracting parties following its expiry (including the situation where the assets must be handed over to the public partner), the procedure for extension of the agreed term, including any consequences thereof for project financing;
- 21) Compensation and offsetting of receivables;
- 22) Consequences of any damaging modification to the regulations;
- 23) Reasons for an early termination and consequences thereof (including the minimum amount that must be paid to the public or to the private partner, manner of payment of the fee and the funds from which the fee shall be paid), contractual fines and relevant provisions envisaged in item 19) of this paragraph;
- 24) Any limitations of liability of the contracting parties;
- 25) All ancillary or related contracts that should be concluded, including those intended to facilitate financing of project-related costs, as well as the effects of such contracts to the public contract. This shall in particular include special provisions based on which the public partner is allowed to conclude a contract with financiers of the private partner and to ensure the rights to the transfer of the public contract to the person specified by the financiers under certain circumstances;
- 26) Applicable law and dispute resolution mechanism;
- 27) Circumstances under which the public partner or a specified third person may (temporarily or in some other manner) take over the management of the facility or any other function of the private partner in order to ensure effective and uninterrupted provision of the service and/or facilities comprising the subject matter of the contract in case of serious omissions by the private partner in the performance of its obligations;
- 27a) Possible right of the public partner or a competent state body to fully or partially suspend the implementation of agreements or assume the execution of respective obligations of the private partner/concessionaire (step-in right), while defining consequences of using that right, in order to protect the public interest, as well as in the event of threats to public safety or to the environment, health of people, or breach private partner's/ concessionaire's commitments stipulated by the public contract;
- 28) Taxation and fiscal issues - if any.

If the public contract, irrespective of the public body that is concluding it, contains provisions leading to any liability of the Republic of Serbia or directly impacting the budget of the Republic of Serbia, it is necessary to obtain the consent from the Government.

In case of a failure to obtain the consent referred to in paragraph 3 of this Article, such provisions are null and void by operation of law.

Regulations of the Republic of Serbia apply to any issues pertaining to public contract that were not specifically regulated by this Law.

### ***Consent for a Public Contract***

#### **Article 47**

Public body, after adoption of the decision on selection of the private partner, and prior to conclusion of the public contract, shall deliver the final draft of the public contract, including any appendices that form an integral part thereto, to the authority referred to in Articles 26 and 29 of this Law for the purpose of granting consent.

The authority referred to in paragraph 1 of this Article shall, based on the assessment of the compliance of the draft contract with this Law and with the tender dossier, give its consent to the final draft of the contract within a term of 30 days from the day of its delivery.

The public contract may be concluded upon obtaining the consent referred to in paragraph 2 of this Article.

Procedure in compliance with the provisions of this Article applies to any amendments and additions to the concluded public contract modifying the rights and obligations of contracting parties.

Consent granted by the Government to the final draft of the public contract in which the Republic of Serbia is not a contracting party does not imply any liability of the Republic of Serbia for the disputes arising from such contract between the public and the private partner.

Unless specified otherwise in writing, the public body that is the public partner in the public contract is always responsible for the realization of a PPP project and for any consequences thereof.

## ***Public Contract Signing***

### **Article 48**

The public partner shall offer to the selected most advantageous tenderer to sign the public contract within the time limit it specified in the decision on the selection of the most advantageous tender, upon obtaining the consent referred to in Article 47 of this Law.

The public contract in written form is signed by the authorized persons of the public partner and of the selected most advantageous tenderer, and if the contract envisages the disposal of any immovable property, i.e. disposal of the shares in a joint company, such contract shall be certified.

By signing the public contract, the private partner acquires the right and assumes the obligation to perform the activity for which the public contract is awarded.

The public contract shall be drawn up in compliance with the tender dossier, all information from the public invitation, selected tender and the decision on the selection of most advantageous tender.

The public partner shall, in addition to the security interest obtained during the most advantageous tenderer selection procedure, at the day the public contract enters into force, accept from the selected most advantageous tenderer the necessary sureties, i.e. security instruments for the collection of the concession fee or other fee, as well as compensation for any possible damage caused due to non-performance of public contract obligations (lien statements, bank guarantees, personal sureties, promissory notes, etc.), in accordance with the estimate of expected value arising from the right awarded by the public contract.

Sureties and security instruments referred to in paragraph 5 of this Article shall be deposited in an appropriate place with the public partner who shall keep them during the term of the public contract in compliance with this Law.

## ***Financing of Public Contracts***

### **Article 49**

A public contract can be financed by the private partner through a combination of direct investments in capital or through lending, including, but not limited to, the structured or project financing, etc., provided by the international financial institutions, banks, i.e. by third parties (hereinafter: the financiers).

With prior consent from the public partner, the private partner shall be authorized to allocate, mortgage, pledge, over the period and to the extent that are in compliance with this Law, i.e. with the law regulating public property, any of its rights, i.e. liability from the public contract or other assets related to the project, for the benefit of the financier, with the aim of securing payment of any incurred or future receivable related to the construction and financing, i.e. refinancing of the subject matter of the PPP.

Upon request from the financier and private partner, the public partner may accept to provide certain reasonably required collaterals and to assume certain responsibilities that are necessary to the private partner in relation to any obligation from the public contract provided that such requirements do not harm the sharing of project risks defined in the contract that has already been concluded.

The request referred to in paragraph 3 of this Article may in addition imply the conclusion of a separate direct contract between the public partner, private partner and the financier, based on which the public partner may, among other things, agree to the following:

1) That the financiers shall be authorized to, instead of the private partner, temporarily exercise all the rights from the public contract and correct any omission made by the private partner, and that the public partner shall accept the said actions as if these were performed by the private partner;

- 2) That the private partner shall not, without obtaining prior consent from the financier, accept the cancellation, i.e. termination of a public contract upon request from the public partner;
- 3) That the public partner shall not, based on the public contract, submit an application in relation to the omissions of the private partner, before providing a prior notification to the financiers thereof in writing, providing the financiers, as well as the private partner, with an opportunity to correct the omissions specified;
- 4) That the public partner shall provide a prior consent to the temporary or final assignment of the contractual position or any right of the private partner arising from the public contract, and that the public partner shall give the required approvals for added collateral provided to the financiers by the private partner;
- 5) Any other common provisions that are justified with the aim of providing for an adequate security of the interests of the public partner and the financier.

The public body shall, prior to concluding the amendments of the public contract, as well as prior to concluding the direct contract referred to in paragraph 4 of this Article, obtain the consent from the authorities referred to in Articles 26 and 29 of this Law in compliance with Article 47 of this Law.

The consent referred to in paragraph 5 of this Article, when it relates to the conclusion of the direct contract, shall imply the right of the financier to, without obtaining any specific subsequent approval, conduct activities and protect its rights in the manner stipulated in the direct contract.

### ***Procedure and Restrictions for Amendments to a Public Contract***

#### **Article 50**

Upon request from the public, i.e. private partner or the bank, i.e. other financial institution, the public contract may be amended.

Amendments referred to in paragraph 1 of this Article may not include the following provisions:

- 1) Subject matter of the contract;
- 2) Contract term;
- 3) In cases of public contracts on concession, the concession fee offered.

If the amendments of the public contract are carried out at the request of financiers, in addition to the limitations set out in paragraph 2 of this Article, those amendments may neither disturb the balance of risk sharing to the detriment of the public partner in accordance with Article 7, paragraph 2, item 6) of this Law, nor increase the value of the public contract for more than 3%.

Request of the financiers referred to in paragraph 3 of this Article should be economically justified, legally documented and acceptable to the public partner.

In case of amendment of the public contracts at the request of financiers referred to in paragraph 3 of this Article, it is necessary to previously obtain an opinion of the ministry responsible for finance affairs for projects referred to in Article 27, paragraph 4, and Article 29 paragraph 5 of this Law.

Provisions of this Law regulating contract conclusion apply to the public contract amendment procedure.

### ***Award of Additional Works to Concessionaire***

#### **Article 51**

In case of a concession for works, the concession grantor may, without conducting a new concession award procedure, award to the concessionaire performing such works additional works that were not included in the originally considered concession project or in the principal public contract on concession, which have become necessary for the performance of works due to some unforeseeable circumstances, in compliance with the relevant provisions of the law regulating public procurements.

### ***Stabilization Clause***

#### **Article 52**

In case of any amendments to the regulations following the conclusion of a public contract that are injurious to the position of the private or public partner, the contract may be amended without restrictions referred to in Article 50 of this Law, and to the extent necessary to restore the private i.e. public partner to the original position held at the time when the public contract was concluded, provided that the term of the public contract may not in any case exceed the term specified in Article 18, paragraph 2 of this Law.

## V DISSOLUTION OF PPP AND CONSEQUENCES OF DISSOLUTION

### ***Manners of Dissolution***

#### **Article 53**

A PPP with or without elements of concession dissolves:

- 1) Upon fulfillment of statutory conditions;
- 2) Upon termination of the public contract due to public interest;
- 3) By means of a mutually agreed termination of the public contract;
- 4) By unilateral termination of the public contract;
- 5) Based on the final court decision whereby the public contract is declared as null and void or cancelled.

A PPP with or without elements of concession dissolves upon fulfillment of the following statutory conditions:

- 1) By expiry of the term of the public contract;
- 2) Upon death of the private partner, i.e. liquidation or bankruptcy of the private partner.

Notwithstanding paragraph 2, item 2) of this Article, a PPP with or without elements of concession does not have to be dissolved upon liquidation or bankruptcy of a consortium member, if at least one consortium member undertakes unlimited joint and several liability to fulfill the portion of the public contract of the liquidated consortium member, i.e. of the consortium member for which the bankruptcy procedure has been concluded, upon prior consent of the public partner.

### ***Early Termination of a Public Contract due to Omissions of Private Partner***

#### **Article 54**

The public partner may unilaterally terminate the public contract in the following cases:

- 1) If the private partner, in case of a concession, has failed to pay the concession fee for more than two consecutive times or in case of continuous lateness in concession fee payment;
- 2) If the private partner does not perform the public works or does not provide public services in accordance with the quality standards for such works, i.e. services in the manner agreed in the public contract;
- 3) If the private partner fails to implement measures and activities necessary to protect the resource in general use, i.e. the public resource, in order to protect the nature and cultural property;
- 4) If the private partner has provided false and incorrect data that was critical for the assessment of its qualifications on the occasion of selection of the most advantageous tender;
- 5) If the private partner, due to its own fault, fails to commence performing of the public contract within the agreed time limit;
- 6) If the private partner additionally performs other activities or omits to perform the necessary activities, which are contrary to the public contract;
- 7) If the private partner has transferred its rights from the public contract to a third party without prior obtaining approval of the public partner;
- 8) In other cases in compliance with the provisions of the public contract and general rules of the law on contracts and torts and accepted legal rules applicable to the specific type of contract.

Criteria based on which the public partner determines the existence of reasons for termination of the public contract referred to in paragraph 1, items 2) to 7) of this Article are specified in the public contract.

Prior to unilateral termination of a public contract, the public partner shall first warn the private partner in writing of such intention and specify an adequate time limit for the removal of reasons for termination of the public contract and for provision of a response to such reasons.

If the private partner fails to remove the reasons for termination of the public contract within the time limit referred to in paragraph 3 of this Article, the public partner terminates the public contract.

In case of a unilateral termination of the public contract by the public partner, the public partner is entitled to compensation for any damage caused by the private partner in compliance with the general rules of the law on contracts and torts.

Specific rules laid down in the public contract, as well as the general rules of the law on contracts and torts apply to the consequences of an early termination of the public contract due to the omissions on the part of the private partner.

### ***Early Termination of a Public Contract Due to Omissions by Public Partner***

#### **Article 55**

The private partner may unilaterally terminate the public contract in compliance with this Law, the public contract and the general rules of the law on contracts and torts, if the public partner acts in the manner which leads to rendering the contractual relation untenable or that completely obstructs the potentials of the private partner to implement the public contract.

The reasons for termination are defined in the public contract. Omissions of the public partner may include:

- 1) Expropriation, seizure or appropriation of assets or the stake of the private partner by the public partner;
- 2) Omission of the public partner in respect to the payments due to the private partner;
- 3) Non-compliance with the obligations from the public contract by the public partner that significantly obstructs or prevents the private partner from carrying out its contractual obligations.

Special rules laid down in the public contract, as well as the general rules of the law on contracts and torts apply to the consequences of the early termination of a public contract due to the omissions of the public partner.

### ***Termination of a Public Contract***

#### **Article 56**

A public contract terminates upon the expiration of the time limit stipulated by the public contract, as well as in other cases prescribed by law or public contract.

In the event of termination of the public contract, facilities, equipment, plants and other assets which are the subject matter of the PPP are handed over to the public partner in accordance with the provisions of the public contract, as well as other agreements concluded by the public partner in relation to the specific PPP project.

The public contract may terminate if the subject matter of the public contract is purchased under the terms prescribed by the public contract, while exceptionally, if so required by the public interest, the purchase of the subject matter of the public contract may be performed under conditions and in the manner set forth by regulations on expropriation, in which case the private partner is entitled to receive full compensation according to the market value.

The public partner may take away the private partner's rights established by the public contract if the private partner is not fulfilling the obligations undertaken by the contract, due to reasons of public safety, as well as in the event that the performance of the concession activity threatens the environment and human health, where the measures envisaged by special regulations are not sufficient to prevent that, in the manner and under conditions determined by the public contract.

### ***Handover of Facilities***

#### **Article 57**

Upon termination of the public contract, the facilities, equipment, plants and other assets comprising the subject matter of the PPP/concession become the property of the Republic of Serbia, autonomous province, unit of the local government, public enterprise, or legal person authorized by a special law which regulates the concession granting, unless stipulated otherwise by the direct contract referred to in Article 49 of this Law.

The private partner/concessionaire surrenders the facility, equipment, plants and other assets referred to in paragraph 1 of this Article, as well as any other facilities that comprise the subject matter of the public contract, which are owned by the Republic of Serbia, autonomous province, unit of the local government, public enterprise, or legal person authorized by a special law which regulates the concession granting free from any lien and in the condition that provides for their unobstructed usage and functioning.

Notwithstanding paras. 1 and 2 of this Article, other facilities built in accordance with Article 7, paragraph 2, item 7) of this Law, which do not serve the subject matter of the public contract (public facility, public service, public infrastructure, etc.), remain in the property of the private partner, whereas the public partner may obtain such facilities in accordance with the public contract.

## VI PROTECTION OF RIGHTS

### Article 58

Legal protection in a public contract award procedure is provided in compliance with the law regulating public procurements.

Any person who is interested in taking part or who already participates in the public contract award procedure on the basis of this Law may submit an application for the protection of rights to the Republic Commission for Protection of Rights in Public Procurement Procedures against the decisions of the public body which conducts the procedure that may be rebutted separately, and which have been, in the opinion of such person, passed unlawfully.

### Article 59

The competent courts of the Republic of Serbia rule on the basis of the general regulations on damage compensation claims of the persons injured by any illegal decision of a public body passed in the public contract award procedure conducted in compliance with this Law.

The private partner is guaranteed with the rights established by the law, public contract and project financing contract, and the foreign persons are in addition guaranteed with the rights established by the international treaties on the promotion and protection of investments that are in force.

If the competent state authority, through the implementation of the regulations on expropriation, passes a decision whereby the right to exploitation the constructed facilities comprising the subject matter of a PPP with or without elements of concession is revoked or restricted, the private partner is entitled to compensation that may not be lower than the market one, and which is paid without delay.

## VII DISPUTE RESOLUTION

### *Arbitration*

### Article 60

Contracting parties may agree to settle any disputes arising from the public contract by arbitration before domestic or international arbitration.

Arbitration that has its seat in a foreign country may be stipulated if the private partner, or his direct or indirect owner, is a foreign legal or natural person, or in the case of a consortium, if at least one member of the consortium, or his indirect or direct owner is a foreign legal or natural person.

If the parties have not agreed dispute resolution by arbitration, the courts of the Republic of Serbia have exclusive jurisdiction.

Applicable law in the procedures referred to in para. 1 to 3 of this Article is the law of the Republic of Serbia.

## VIII SUPERVISION

## ***Supervision over Public Contracts' Realization***

### **Article 61**

The Government issues a special bylaw to regulate the supervision over the realization of public contracts within the meaning of this Law.

The bylaw referred to in paragraph 1 of this Article prescribes the rights and obligations of the public and private sectors in the contract realization supervision procedure.

Supervision in the concession award procedure for public works, i.e., for public services is conducted through adequate implementation of the law regulating public procurements.

### **Article 62**

In addition to the supervision referred to in Article 61 of this Law, the Ministry in charge of finances, i.e. the authority of the autonomous province or of the local government unit in charge of finances may independently, without any request from the public partner, initiate the procedure of supervision, using the inspection services, i.e. competent tax services and authorities, of the private partner who fails to perform obligations in accordance with the public contract, within the competence of the Ministry in charge of finances, i.e. the authority of the autonomous province or the local government unit in charge of finance affairs.

The public partner, i.e. the competent authority for implementation or supervision of the implementation of the law regulating certain type of PPP with or without elements of concession, shall comply with and execute the requests of the ministry in charge of finance affairs, i.e. of the authority of the autonomous province or the local government unit in charge of finances, and take part in carrying out all types of supervision referred to in paragraph 1 of this Article.

In case of a failure to implement the measures and recommendations of the ministry in charge of finance affairs, i.e. the authority of the autonomous province or local government unit in charge of finances, as well as in case of any failure to materialize cooperation, the ministry in charge of finance affairs, i.e. the authority of the autonomous province or of the local government unit in charge of finances, may request initiation of administrative and inspection supervision in compliance with provisions of the law regulating the operations of the state administration bodies.

In addition to the measures referred to in para. 1 to 3 of this Article, the ministry in charge of finance affairs, i.e. the authority of the autonomous province or of the local government unit in charge of finances, implements any other activities related to cooperation with public partners implementing the public contracts with a view to provide for preventive action, as well as with the aim of coordinating all activities in the field of PPP with or without elements of concession, during the entire term of the public contract.

### **Article 63**

In compliance with this law, the public partner shall continuously monitor the work of the private partner and carrying out of its obligations from the public contract, as well as the effectuating of all payments in compliance with the public contract.

The public partner shall:

- 1) At least once a year, require from the private partner to produce special periodic reports on its work, activities and performance of obligations, in compliance with the public contract;
- 2) Notify the ministry in charge of finances, i.e. the authority of the autonomous province or the local government unit in charge of finances, of the received periodic reports in compliance with provisions of the paragraph 2 of this Article;
- 3) During the term of the public contract, maintain special documentation pertaining to the business operation of the private partner, in addition to which it shall keep records of all the affiliated companies of the private partner awarded with the contract, as well as of the subcontractors;
- 4) Keep the documentation pertaining to a specific PPP with or without elements of concession, until the expiry of the contract duration. Upon expiry of the term of the contract, the documentation is kept in compliance with the special regulations governing the keeping of archive documentation;
- 5) Within a term of no more that 30 days from the day of receipt of the request by the ministry in charge of finances, i.e. the authority of the autonomous province or of the local government unit in charge of finance

affairs, deliver complete necessary information on the existing PPP, with or without elements of concession;

6) Notify the competent public attorney's office of any acts of non-compliance with the contract, in cases where there are reasons for initiation of certain procedures by the competent public attorney's office.

The public partner shall, in case of any outstanding debts arising from the contract, undertake all supervision and enforced collection measures and all legal actions in compliance with the provisions of the public contract, other authorizations, as well as with the provisions of this Law.

#### **Article 64**

The public partner shall, in a timely manner and in writing, notify the ministry in charge of finance affairs, i.e. the authority of the autonomous province or of the local government unit in charge of finance affairs, of any irregularities perceived and measures undertaken, at the latest within a term of 30 days from the day of such perceived irregularity, i.e. undertaken measure.

The private partner shall comply with the request of the public partner or the ministry in charge of finances, i.e. the authority of the autonomous province or of the local government unit in charge of finance affairs, if it is required from it to produce a certificate of performance of the undertaken contractual obligations or other information of relevance on compliance with the contract, within a term of 30 days from the day of the receipt of the request.

In case of failure to act according to the request referred to in paragraph 2 of this Article, the public partner shall initiate all legal actions in compliance with its authorities and provisions of the public contract.

In procedures where it is not possible to perform the obligations from the public contract, the public partner shall notify thereof the competent public attorney's office and supervisory and inspection services, as well as initiate all necessary actions and measures to remedy the perceived irregularities.

The public partner shall notify the ministry in charge of finance affairs, i.e. the authority of the autonomous province or of the local government unit in charge of finance affairs of the measures taken referred to in paragraph 4 of this Article within a term of 15 days from the day such measures were taken, and to regularly report on all procedures initiated during the realization of the said measures.

## **IX COMMISSION**

### ***Commission for Public-Private Partnership***

#### **Article 65**

Expert assistance in the realization of public-private partnership projects and concessions in compliance with this Law is provided by the Commission for Public-Private Partnership (hereinafter: the Commission) established by the Government upon proposal of the Prime Minister, the ministry in charge of economy and regional development, ministry in charge of finances, ministry in charge of infrastructure, ministry in charge of mining, ministry in charge of public utilities, ministry in charge of environmental protection, autonomous province and the city of Belgrade.

The representative of the ministry in charge of economy and regional development (hereinafter: the Ministry), is at the same time the chairperson of the Commission, and the representative of the ministry in charge of finances is the deputy chairperson of the Commission.

The Commission has nine members.

To be nominated for a Commission member, a person must be a national of the Republic of Serbia, holding at least a high level of vocational education and having the necessary professional expertise in the field of public-private partnerships, public procurements and concessions and/or European Union law.

A Commission member receives remuneration for work in the Commission, as determined by the Government.

The Commission adopts the rules of its procedure.

The Commission is operationally independent in its work.

### ***Funding and Conditions for Work of the Commission***

## **Article 66**

The funding for the work of the Commission are provided in the budget of the Republic of Serbia.

The Ministry provides the premises and other conditions for the work of the Commission.

### ***Appointment and Termination of the Term of Office of a Commission Member***

## **Article 67**

A Commission member is appointed for a period of five years with the option of a reappointment, upon the proposal by the same nominator.

The term of office of a Commission member terminates:

- 1) Upon expiry of the term of appointment;
- 2) In case he acts contrary to the provisions of this Law;
- 3) In case he fails to comply during work with the provisions of the rules of procedure;
- 4) In case of a conviction to an unconditional sentence of imprisonment of at least six months;
- 5) Upon personal request, by submitting the resignation in writing.

### ***Jurisdiction of the Commission***

## **Article 68**

The Commission:

- 1) Assists in preparation of proposals for PPP in order to facilitate the development of public-private partnerships and public contracts;
- 2) Informs and consults on the issues of public-private partnerships with or without elements of concession;
- 3) Provides opinion in the approval procedure for PPP project proposals without elements of concession and in the procedure for proposing of concession bylaw, to the authorities competent for approving;
- 4) Identifies and facilitates the implementation of the best foreign experiences in the Republic of Serbia in respect to the public-private partnerships with or without elements of concession;
- 5) Produces methodology materials in the field of public-private partnership;
- 6) Cooperates with other state administration institutions and non-governmental organizations in the field of public-private partnerships;
- 7) Upon request of the public body, i.e. concession grantor, provides recommendations for projects;
- 8) Submits to the Government the annual report on projects realized in compliance with this Law in the Republic of Serbia;
- 9) Cooperates with the authorities of the Republic of Serbia in charge of budget inspection affairs, with the State Audit Institution, relevant service of the autonomous province, i.e. local government unit in charge of budget inspection affairs and with other domestic and international authorities, organizations and institutions in performance of tasks within the scope of its jurisdiction;
- 10) Publishes, on its internet presentation, the annual report referred to in item 8) of this Article upon the adoption thereof by the Government, as well as other data and information that it considers to be of relevance for the implementation of this Law;
- 11) In addition performs other tasks in compliance with this Law.

### ***Expert, Administrative and Technical Tasks Performed for the Commission***

## **Article 69**

Expert, administrative and technical tasks for the Commission are performed by the Ministry, especially the following ones:

- 1) Receives project proposals and processes them;
- 2) Maintains records on PPP and concession projects;
- 3) Prepares proposal of the annual report that is to be submitted by the Commission to the Government;
- 4) In addition, performs other expert, administrative and technical tasks of relevance for the work of the Commission.

## **X RIGHTS AND OBLIGATIONS IN THE PROCEDURE OF PUBLIC CONTRACT REALIZATION**

### ***Ownership of Immovables***

#### **Article 70**

If the Republic of Serbia is the owner of immovables intended to be used for conducting the concession activity, i.e. for the realization of a public-private partnership project, and if the concession grantor, i.e. the party proposing the PPP project is an autonomous province or a local government unit, the consent to the proposal for rendering a concession bylaw, i.e. to the proposal of the PPP project, is given by the Government upon proposal of the ministry in charge of finance affairs.

If the owner of the immovable property intended to be used for conducting a concession activity, i.e. realization of a PPP project, is a private or another person, such immovable property is to be expropriated in compliance with the law regulating expropriation.

### ***Lien***

#### **Article 71**

The private partner may place a lien right or other security interest upon property comprising the subject matter of the public contract, i.e. upon the stake in the joint company for the benefit of the bank or another financial institution if that was envisaged by the public contract and with prior approval of the public partner, except upon objects upon which, within the meaning of the law regulating public property, mortgage or another means of security interest may not be placed.

The rights referred to in paragraph 1 of this Article may not be transferred or assigned to any third party without explicit consent of the public partner.

The person referred to in paragraph 1 of this Article shall, within a term of no more than 30 days from the day of lien right placement, notify the ministry in charge of finances, i.e. authority of the autonomous province or local government unit in charge of finance affairs of all lien rights realized based on the request referred to in paragraph 1 of this Article.

### ***Foreign Exchange Treatment of PPP with or without Elements of Concession***

#### **Article 72**

Fees paid by the public, i.e. private partner on the basis of the public contract may be denominated in a foreign currency, while the payment of the fee is made in dinars, in the manner prescribed by the public contract.

Notwithstanding paragraph 1 of this Article, upon proposal of the public body, the Government may give consent that the payments that are related to activities from the public contract may be effectuated in a foreign currency, as well as that the funds on the account of the private partner may at any moment be converted into and stored in a foreign currency.

### ***Handling of Objects Found***

#### **Article 73**

The private partner shall hand over to the public partner, without any compensation, the objects found in the land, which have historical, cultural or natural value.

If further performance of works could pose a threat to the entirety i.e. the value of the object found, the private partner shall discontinue the works and notify thereof the public authority in charge of the protection of historical, cultural and natural values.

Mutual rights and obligations of the private and public partners in case referred to in paragraph 2 of this Article are regulated by the public contract.

### ***Public Contracts Register***

#### **Article 74**

Public contracts are registered in the Public Contracts Register (hereinafter: the Register) maintained by the ministry in charge of finances, as a consolidated electronic database on the public procurements portal - as a sub-portal.

The public body shall deliver to the ministry referred to in paragraph 1 of this Article the concluded public contract with all the annexes thereto, as well as any amendments and annexes thereto, for the purpose of registration in the Register.

The Minister in charge of finances prescribes the contents of the Register and the method of maintenance thereof, deadlines for the delivery of public contracts and annexes referred to in paragraph 2 of this Article, method of registration and persons authorized to access the Register, as well as data accessible, in compliance with special regulations governing data protection and trade secret.

The Register is publicly accessible.

## **XI TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 75**

Procedures initiated until the day this Law enters into force shall be completed in compliance with the regulations according to which these were initiated.

#### **Article 76**

The regulations referred to in Articles 61 and 74 of this Law shall be adopted within a term of 90 days from the day this Law enters into force.

#### **Article 77**

The Law on Concessions ("Official Herald of RS", No. 55/03) is repealed as of the day this Law enters into force.

#### **Article 78**

This Law enters into force on the eighth day from the day of its publication in the "Official Herald of the Republic of Serbia".

### ***Independent articles of the Law on amendments to the Law on public-private partnership and concessions***

*("Off. Herald of RS", No. 15/2016)*

#### **Article 24**

Procedures initiated until the day this Law enters into force shall be completed in compliance with the regulations according to which these were initiated.

#### **Article 25**

This Law enters into force on the eighth day following the day of its publication in the "Official Herald of the Republic of Serbia".

***Independent articles of the Law on amendments to the  
Law on public-private partnership and concessions***

*("Off. Herald of RS", No. 104/2016)*

**Article 34**

Procedures instigated up to the day of entry into force of this Law shall be finalized in accordance with the provisions of this Law.

**Article 35**

Secondary legislation referred to in the Article 21 of this Law shall be adopted within a term of 90 days as of the day of entry into force of this Law.

**Article 36**

This Law shall enter into force on the eighth day from the day of publishing in the "Official Herald of the Republic of Serbia".