

Legal News

May 2016

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On 27.04.2016, the Council of Ministers approved the Decision no. 313 “On some amendments and additions to the Decision of the Council of Ministers no. 575, dated 07.10.2013, "On the approval of the rules for the assessment and granting in concession/public private partnership” (the “Decision”).

Published with the Official Gazette no. 79, dated 11.05.2016, the Decision enters into force as of the date of its publishing.

This Decision inter alia provides that the contracting authority pursuant to the field of activity that covers, identifies and assesses the concession/PPP project(s). The starting point for identifying a possible concession/PPP project might be the process of national/regional/sectorial level planning, the analysis of the situation of infrastructure, the identification of possible lack of services and/or needs for investments as well as project-ideas driven by policy priorities, etc.

For assessing the project, the contracting authority establishes the commission on concession/PPP. The said commission drafts a summarized report which focuses especially on aspects such as the necessity and adequacy of the project per se. The report should contain a description of the actual situation, general overview of the project, strategic and operational benefits to be expected including eventual project shortcomings, preliminary costs and financial sustainability of the same, conclusions and



recommendations on project implementation, proposals for award of bonuses based on technical and financial results for unsolicited proposals, etc.

The contracting authority, based on the said report resolves to:

- a) postpone or refuse the project;
- b) continue the procedures with the drafting of the feasibility study;
- c) return the unsolicited proposal to the proposing party in order to complete it with the missing information/documents.

As for the feasibility study, also this document is drafted by the commission, which should complete it within 60 working days, from the date of its establishment, whilst in cases of concession/PPP for hydropower plants, the said term will start after the state's technical objections have been received. Notwithstanding the foregoing the term cannot be postponed for more than 30 working days in cases of complexity of the project.

Another important intervention regards the unsolicited proposals with regard to concession/PPP. To this effect, the Decision provides that the unsolicited proposal should contain a description of the actual situation, assessment of the main shortcomings, operational and strategic benefits of the project, social and environmental implications, economic and financial analysis of the project, etc.

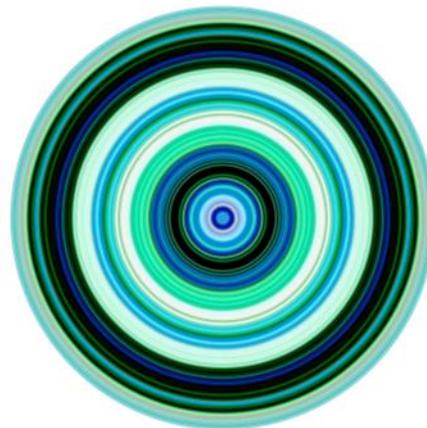
After the submission of the unsolicited proposal, the commission of concession/PPP drafts a summarized report in which it verifies that the proposal fulfills all legal requirements and the submitted documentation is complete. The report provides inter alia, if the objectives of the project are clearly defined and achievable as well as if the project serves to a public interest and is economically sustainable including is the proposed level of risk allocation to state institutions is reasonable, etc. During the drafting phase of the said report the contracting authority may require addition information to the proposing party.

Based on such report, the contracting authority may:

- a) accept the proposal and proceed with the drafting of the feasibility study;
- b) return the proposal to the proposing party in order to complete it with the missing information/documents;
- c) refuse the proposal and renounce the project altogether.

The Decision provides that the term for completing a feasibility study in cases of an unsolicited proposal, is no more than 60 working days from the date of establishment of the commission and cannot be postponed for more than 30 working days in cases of complexity of the project.

In case of acceptance of an unsolicited proposal, the proposing party benefits a bonus for its technical-financial result achieved during the competition procedure to a maximum of 10% of the total points.



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