

Regulations for Application of the Public-Private Partnership Act

Adopted by Council of Ministers Decree No. 6 of 10 January 2013, promulgated in the *State Gazette* No. 5 of 18 January 2013 (effective 1 January 2013)

Chapter One GENERAL DISPOSITIONS

Article 1. These Regulations regulate the terms and procedure for application of the Public-Private Partnership Act, hereinafter referred to as “the Act”.

Chapter Two PUBLIC-PRIVATE PARTNERSHIP PROGRAMMING

Article 2. (1) The National Public-Private Partnership Programme shall be the principal document for strategic planning of public-private partnership (PPP), which shall contain the general and specific objectives, the development strategy and the key priorities of the State policy for implementation of PPP in the country.

(2) The National PPP Programme shall be prepared in interconnection with national strategic and programme documents of the Republic of Bulgaria in conformity with the requirements of the law.

(3) The National PPP Programme shall be elaborated for a seven-year effective period concurrent with the respective programming period.

Article 3. (1) The Minister of Finance shall organise and exercise control over the process of development and coordination of the National PPP Programme.

(2) The draft of the National PPP Programme shall be discussed and coordinated at the Council on Development with the Council of Ministers.

Article 4. Acting on a motion by the Minister of Finance, the Council of Ministers shall adopt the National PPP Programme within six months prior to the beginning of the effective period thereof.

Article 5. The policy for implementation of municipal PPPs and PPPs for municipal bodies governed by public law for the respective effective period shall be set in the municipal development plan developed in pursuance of Item 7 of Article 9 of the Regional Development Act.

Chapter Three

PREPARATION OF PPP PROJECT IMPLEMENTATION

Section I Planning

Article 6. (1) The preparatory steps shall be performed for PPP projects which are included in the Operational Plan referred to in Article 15 of the Act, hereinafter referred to as “the Operational Plan” or, respectively, in the municipal development plan implementation programme referred to in Article 18 of the Act, hereinafter referred to as “the municipal development plan”.

(2) PPP projects shall be included in the Operational Plan or, respectively, in a municipal development plan implementation programme, under terms and according to a procedure established by the Regulations, conforming to the criteria for inclusion established by the ordinance referred to in Article 22 of the Act.

Article 7. (1) Within the framework of the budgeting procedure, the public partner shall present to the Ministry of Finance proposals for State PPP projects and PPP projects of State bodies governed by public law for inclusion in the Operational Plan.

(2) The proposals referred to in Paragraph (1) shall be accompanied by an *ex ante* evaluation of the feasibility of the project by means of PPP, which shall contain:

1. a description of the project and expected outcomes: project title, objectives, scope and activities, expected timeframe for implementation of the project and an *ex ante* technical and economic justification of the project, a socio-economic analysis of the outcomes expected from the implementation of the project, an analysis of the allocation of risks and an analysis regarding the fulfilment of the legal requirements for implementation of PPP;

2. a proposal for a form and amount of the financial support from the public partner, an *ex ante* assessment of the impact of the project parameters on the budget;

3. an *ex ante* evaluation for obtaining better value for money from invested public funds;

4. amount of the funds necessary for performance of the preliminary steps.

(3) Where the proposal results from an initiative taken by an interested party, the *ex ante* evaluation of the feasibility of the project by means of PPP may be prepared on the basis of the documents presented on the part of the interested party.

Article 8. (1) The Minister of Finance shall prepare a list of the proposals received under Article 7 herein and an analysis of the extent to which the criteria for inclusion of the project in the Operational Plan are met.

(2) The projects included in the list referred to in Paragraph (1) shall be laid before the

Council on Development with the Council of Ministers for coordination before the submission of the said projects for consideration and approval by the Council of Ministers.

(3) The Council on Development with the Council of Ministers shall hold a meeting whereat the said Council shall coordinate and shall adopt a decision proposing projects from the list referred to in Paragraph (1) to the Council of Ministers for approval.

(4) Acting on the basis of the decision of the Council on Development with the Council of Ministers, the Minister of Finance shall lay a draft decision approving or modifying the Operational Plan before the Council of Ministers for consideration.

Article 9. (1) The Operational Plan may be updated in the following cases:

1. where, on the basis of the justification approved, the project parameters have been changed compared to those set in the Operational Plan;

2. after conduct of a procedure for selection of a private partner in conformity with the tender of the tenderer selected as a private partner;

3. where, in the course of a current implementation of a PPP project, a necessity has arisen to change the parameters set in cases specified by the law;

4. where the necessity of implementation of a project by means of PPP has lapsed as determined by the public partner.

(2) The proposals referred to in Paragraph (1) shall be presented by the public partner to the Ministry of Finance within the framework of the budgeting procedure, and the Operational Plan shall be updated according to the procedure established by Article 8 herein.

(3) The proposals referred to in Paragraph (1) shall be accompanied by the prepared documents referred to in Article 14 herein and/or by other analyses and documents provided for in the Act or in the Regulations.

Article 10. (1) The municipality mayor shall present at the municipal council proposals for municipal PPP projects and PPP projects of municipal bodies governed by public law for inclusion in the municipal development plan implementation programme.

(2) The proposals referred to in Paragraph (1) shall be accompanied by an *ex ante* evaluation of the feasibility of the project by means of PPP, prepared according to the requirements of Article 7(2) herein.

(3) The Municipal Council shall consider the proposals referred to in Paragraph (1) and, depending on the extent to which the criteria for inclusion are met, shall adopt a resolution approving the projects for inclusion in the municipal development plan implementation programme.

(4) The municipal development plan implementation programme may be amended and/or

updated in the part on PPP by resolution of the municipal council.

(5) The municipality mayor may propose updating of the municipal development plan implementation programme in the following cases:

1. where, on the basis of the justification approved, the project parameters have been changed compared to those set in the implementation programme;

2. after conduct of a procedure for selection of a private partner in conformity with the tender of the tenderer selected as a private partner;

3. where, in the course of a current implementation of a PPP project, a necessity has arisen to change the parameters set in cases specified by the law;

4. where the necessity of implementation of a project by means of PPP has lapsed as determined by the municipality mayor.

(6) The proposals referred to in Paragraph (5) shall be accompanied by the prepared documents referred to in Article 14 herein and/or by other analyses and documents provided for in the Act or in the Regulations.

Section II

PPP Initiated by Interested Party

Article 11. (1) Any interested party may propose the implementation of a PPP to a competent public partner.

(2) The proposal of the interested party referred to in Paragraph (1) shall be accompanied by a justification and a financial and economic analysis, and where the said proposal includes works, also by a pre-development study or a development-project design, with content as specified in the Regulations.

(3) Not later than three months after the interested party has stated the initiative thereof in writing, the public partner concerned shall notify the said interested party of the results of the study of the initiative and of the decision or resolution of the said public partner to refuse or to take steps for inclusion of the project in the Operational Plan or, respectively, in the municipal development plan implementation programme.

Article 12. (1) The pre-development study or the development-project design or parts thereof may be used for development of the technical specifications in the contract documents or in the descriptive document.

(2) Where the public partner has used the pre-development study or the development-project design, the interested party shall be entitled, unless selected as a private partner, to remuneration for the data from the pre-development study or from the development-project design used in the technical specifications under a methodology according to Annex 2 hereto.

The amount of the remuneration referred to in Paragraph (2) shall be specified in the decision

on initiation of a procedure for selection of a private partner and shall be paid by the public partner concerned within one year after the publication of the notice.

Section III

Preparatory Steps

Article 13. (1) The preparatory steps shall be performed by the competent public partner referred to in Article 13 of the Act under terms and according to a procedure established by the Act and by the Regulations.

(2) The public partner shall issue an order designating the responsible persons, the obligations thereof, the objectives, the time limit and the financial resources for performance of the preparatory steps.

(3) The costs of conduct of the preparatory steps shall be for the account of the public partner concerned, and the necessary funds shall be planned within the framework of the budgeting procedure for the respective year.

Article 14. (1) The preparatory steps shall include procuring by the public partner of the preparation of:

1. a justification to prove the socio-economic cost-benefit impact of the implementation of the project by means of PPP, and

2. drafts of documents referred to in Item 2 of Article 31 of the Act.

(2) The justification referred to in Item 1 of Paragraph (1) shall be based on:

1. a pre-development study or a development-project design: where the PPP project includes works;

2. a financial and economic analysis which shall prove as a minimum:

(a) the obtaining of better value for money from invested public funds by means of PPP;

(b) the affordability of the PPP project to the State budget or to the municipal budget or to the budget of the body governed by public law, as the case may be;

3. a legal analysis regarding compliance with the legal requirements for PPP.

(3) The documents covered under Paragraph (2) shall be developed in accordance with the minimum requirements specified in Annex 1 hereto.

Article 15. The justification referred to in Item 1 of Article 14(1) herein shall contain as a minimum:

1. the project objectives related to satisfaction of public needs, and the extent to which the said objectives are attained by the project proposed;
2. output specification of the project identifying quantitative and qualitative characteristics for the activity of general interest;
3. financial and economic parameters of the project and conclusions about the effectiveness and socio-economic cost-benefit impact of the said project, including obtaining of better value for money from invested public funds;
4. reasoned proposals for a form, maximum amount and schedule for provision of the financial support, maximum duration of the term of the PPP contract, maximum rate of return to the private partner for the project;
5. conclusions about the impact of the PPP project parameters on the budget, including an evaluation of compatibility with the State aid regime;
6. a conclusion regarding the fulfilment of the legal requirements for implementation of the project by means of PPP, including the circumstances covered under Article 3(2) of the Act.

Article 16. (1) The justification referred to in Item 1 of Article 14(1) herein shall be considered and proposed for approval to the public partner by an expert council referred to in Article 30(4) of the Act.

(2) The rights, obligations and responsibilities of the expert council, as well as the composition thereof, shall be determined by an order of the public partner.

(3) The expert council may act on a permanent basis or may be formed for each particular PPP project.

(4) The composition of the expert council may include internal and external experts appropriately qualified and experienced in accordance with the PPP project.

Article 17. (1) The draft of a justification, the studies, analyses and drafts of documents referred to in Item 2 of Article 31 of the Act shall be developed in a sequence and interconnection by experts of the relevant administration possessing the requisite qualification and experience, and/or through commissioning an external consultant or consultants at the discretion of the public partner.

(2) The commissioning of an external consultant or consultant to prepare one or more of the documents referred to in Paragraph (1) shall follow the terms and the procedure established by the Public Procurement Act.

Article 18. (1) For State PPPs and PPPs of State bodies governed by public law, the public partner shall present to the Minister of Finance a request for approval of the financial and economic analysis.

(2) The documents covered under Article 14(2) herein shall be attached to the request referred to

in Paragraph (1).

(3) The Minister of Finance shall approve or shall refuse to approve the financial and economic analysis within three months after receipt of the request referred to in Paragraph (1).

(4) Where, according to the State Aids Act and the Regulations for Application of the State Aids Act, adopted by Council of Ministers Decree No. 61 of 2007 (promulgated in the *State Gazette* No. 26 of 2007; amended and supplemented in No. 97 of 2007, No. 10 of 2009 and No. 3 of 2010), there is a requirement to notify the European Commission, the approval shall be issued within one month after the date of the decision of the European Commission whereby the granting of the aid is authorised.

(5) Approval under Paragraph (3) shall be refused where the documents presented do not prove fulfilment of the conditions of Article 6(2), Article 9 (2) and Item 2 of Article 30 (1) of the Act.

(6) The approval or the refusal of approval referred to in Paragraph (3) shall furthermore contain an opinion regarding:

1. conformity of the project parameters with the parameters set in the Operational Plan;
2. correctness of the financial and economic analysis elaborated, the input data used and the results and conclusions of the said analysis;
3. the obtaining of better value for money from invested public funds;
4. the proposed mechanism, form and maximum amount of financial support, including for the compatibility with the legislation in the State aid field;
5. the proposed maximum rate of return to the private partner for the project;
6. the allocation of risks between the parties;
7. affordability of the proposed parameters of the PPP project to the budget, including an assessment of the impact of the project, disaggregated by year, on the indicators of the budget balance (deficit/surplus) on a cash basis and an accrual basis and general government debt, calculated according to the methodology of the European System of National and Regional Accounts in the Community and the applicable budget legislation.

Article 19. (1) The Minister of Finance shall commission an external contractor, under the terms and according to the procedure established by the Public Procurement Act, to prepare a draft of an opinion referred to in Article 18(6) herein with a view to guaranteeing an independent expert evaluation of the socio-economic cost-benefit impact of the implementation of the project by means of PPP.

(2) The opinion prepared under Paragraph (1) shall be coordinated with the competent directorates at the Ministry of Finance in the part concerning State aids and affordability to the budget.

(3) The scope of the activity under the contract concluded with the selected external contractor may include evaluation of more than one PPP project.

Section IV

Inclusion of PPP Project in State or Municipal Budget

Article 20. Proposals for inclusion of PPP projects as an annex to the State budget or to the municipal budget, as the case may be, shall be presented within the framework of the budgeting procedure for the respective year.

Article 21. (1) The annex to the State Budget of the Republic of Bulgaria Act, referred to in Article 16(1) of the Act, shall contain all State PPP projects or PPP projects of State bodies governed by public law with envisaged payments from the State budget for which a procedure for selection of a private partner is forthcoming during the respective year.

(2) The annex referred to in Paragraph (1) shall contain systematised information on each project presented in a tabulated form as follows:

1. project title;
2. responsible public partner;
3. estimated period for implementation of the project;
4. amount of expenditures of the public partner for the respective budget year;
5. total estimated amount of payments for the duration of the PPP project.

(3) The annex to the municipal budget, referred to in Article 21(1) of the Act, shall contain all municipal PPP projects or PPP projects of municipal bodies governed by public law with envisaged payments from the municipal budget for which a procedure for selection of a private partner is forthcoming during the respective year. The annex shall have the content covered under Paragraph (2).

Article 22. (1) As a result of the preparatory steps taken and after inclusion of the PPP project as an annex to the State Budget of the Republic of Bulgaria Act for the respective year or in the municipal budget for the respective year, as the case may be, the public partner shall make a reasoned proposal to the authority referred to in Article 32(2) of the Act for initiation of a procedure for selection of a private partner.

(2) The justification, the drafts of documents referred to in Item 2 of Article 31 of the Act, as well as other documents provided for by a statutory instrument, shall be attached to the proposal referred to in Paragraph (1).

(3) The proposal referred to in Paragraph (1) shall furthermore reason:

1. the core conditions and elements of the PPP projects, including defining the core rights and obligations of the parties to the PPP contract;
2. the conditions and parameters whereunder the economic balance is maintained and the circumstances of legal and factual nature upon the occurrence of which the economic balance will be considered upset;
3. the reasons covered under Article 50(2) of the Act, in case the PPP project is to be implemented by means of a public-private company;
4. the chosen procedure under the Public Procurement Act for selection of a private partner;
5. the one or more selection criteria chosen;
6. the chosen indicators, the relative weighting thereof and the methodology for arrival at the integral evaluation of the tender.

Chapter Four

ALLOCATION OF RISKS AND FINANCIAL SUPPORT

Article 23. (1) The allocation of risks between the parties shall be specified by the PPP contract on the basis of the financial and economic analysis and of the tender of the tenderer selected as a private partner.

(2) The risks which the public partner assumes for the entire duration of the term of the PPP contract shall be specified by the decision or resolution on initiation of a procedure for selection of a private partner and by the contract documents or, respectively, the descriptive document for participation in the procedure.

Article 24. (1) The private partner shall participate in PPP at a rate of return to the private partner for the project, set by the private partner, which may not be higher than the maximum rate determined by the decision or resolution on initiation of a procedure for selection of a private partner.

(2) The rate of return to the private partner shall be an element of the financial and economic model proposed by the tender of the tenderer selected as a private partner.

Article 25. The public partner shall participate in PPP by means of financial support to the private partner, which may be provided in the form of:

1. payments to the private partner;
2. conferring rights to immovables or parts thereof other than the facility whereby the activity of general interest is carried out for the carrying out of a supplementary economic activity and/or for provision of supplementary services beyond the activity of general interest;

3. conferring rights to carry out a supplementary economic activity and/or to provide supplementary services beyond the activity of general interest by the facility whereby the activity of general interest is carried out.

Article 26. (1) The financial support referred to in Item 1 of Article 25 herein shall be specified by the tenderer selected as a private partner to an amount which may not exceed the amount determined by the decision or resolution on initiation of a procedure for selection of a private partner.

(2) The conditions for effecting the payments and the intervals at which the payments are effected shall be specified by the PPP contract.

(3) Payments shall be effected to the private partner only when the facility and/or the service conforms to the serviceability, volume and quality agreed in accordance with the technical specifications.

(4) Payments shall not be effected until the agreed conformity to the technical specifications is achieved, and in case of a detected subsequent non-conformity the payments shall be reduced proportionately or shall be suspended for the period until the non-conformity is cured. Additional sanctions, which shall be specified by the PPP contract, may furthermore be imposed on the private partner for the detected non-conformity.

Article 27. The price of the rights conferred under Item 2 of Article 25 herein shall be determined by a registered independent appraiser within the meaning given by the Independent Appraisers Act.

Article 28. (1) The amount of the financial support referred to in Item 3 of Article 25 herein shall be determined on the basis of the estimated profit accruing from a supplementary economic activity and/or from provision of supplementary services according to the tender of the tenderer selected as a private partner for the entire period of conferral of the rights.

(2) The amount of financial support referred to in Items 1 and 2 of Article 25 herein may not be increased in the cases where the reported profit accruing from a supplementary economic activity is lower than the agreed profit and/or is insufficient to reach the rate of return to the private partner for the project.

Article 29. (1) The PPP contract shall set the conditions, the procedure and the time limits for making corrections to the amount of payments to the private partner and/or for receiving a part of the profit accruing from a supplementary economic activity in the cases referred to in Article 9(4) of the Act.

(2) For the purposes of Paragraph (1), not later than the 31st day of May of the current year the private partner shall present a report on the implementation of the financial and economic model as at the 31st day of December of the last preceding year, disaggregated by constituent element of the said model.

(3) The report referred to in Paragraph (2) shall furthermore contain an analysis comparing

the indicators of financial effectiveness as set, as achieved and as expected for the term of the PPP contract.

(4) The report referred to in Paragraph (2) shall be subject to certification by a registered auditor according to the Independent Financial Audit Act prior to the presentation of the said report to the public partner.

Article 30. Where the financial support is sourced in borrowed funds, the provisions of the Government Debt Act or, respectively, of the Municipal Debt Act shall apply.

Chapter Five

ECONOMIC BALANCE

Article 31. (1) An economic balance shall be maintained in a PPP, constituting the equilibrium between the benefits to the public partner and the private partner and the allocation of risks therebetween.

(2) The economic balance shall be determined on the basis of the rights and obligations of the parties and the conditions for implementation of the PPP project, as specified by the PPP contract, and shall be maintained for the entire duration of the term of the contract.

(3) The maintenance of the economic balance shall be subject to control according to the procedure established by Chapter Seven herein.

Article 32. (1) Upon upsetting of the economic balance, each of the parties to a PPP contract may request that the contract be amended or supplemented in order to restore the economic balance.

(2) Any such request shall be submitted to the other party by a reasoned proposal on the basis of an integral analysis of the circumstances which have led to upsetting of the economic balance, including the change of the financial and economic parameters of the project.

(3) The party concerned shall consider the reasoned proposal that the PPP contract be amended or supplemented and shall present an opinion on the said proposal within three months after the submission of the request referred to in Paragraph (1).

Chapter Six

PPP CONTRACT. PERFORMANCE GUARANTEES AND LIABILITY FOR NON-PERFORMANCE

Article 33. The PPP contract shall be concluded in conformity with the requirements for content under Article 44 of the Act and under the Regulations.

Article 34. (1) Upon non-fulfilment of an obligation under the PPP contract, the party at

fault shall owe damages to an amount fixed by the contract.

(2) Upon non-payment of damages on the part of the private partner, the public partner shall draw down the amount due from the respective bank guarantee referred to in Article 35 herein.

(3) Where the amount of the bank guarantee is insufficient to cover the amount of the damages, the public partner shall set off the balance due against the amount of payments referred to in Item 1 of Article 25 herein and/or shall collect the amounts due according to the statutorily established procedure.

Article 35. (1) The private partner shall furnish financial security to guarantee the fulfilment of the obligations under the PPP contract in the form of bank guarantees.

(2) The types and amount of the bank guarantees shall be specified for each separate PPP contract, and the aggregate amount of the bank guarantees furnished may not be less than 5 per cent of the total amount of the financial support specified by the decision or resolution on selection of a private partner.

(3) The bank guarantees shall be furnished in a manner ensuring that the obligations of the private partner under the PPP contract are secured at all times.

(4) In the cases referred to in Article 34(2) herein, the private partner shall be obligated to restore the initial amount of the guarantee within 30 days after the notification of call on the guarantee.

Article 36. (1) Upon early termination of the PPP contract through the fault of the private partner, the said partner shall owe compensation to an amount of not less than 50 per cent of the amount of the compensation provided for under Article 63 of the Act.

(2) The private partner shall furthermore owe damages to the amount of one-twelfth part of the annual payment referred to in Item 1 of Article 25 herein for the last preceding year for each month until the conclusion of a new PPP contract but for not more than 12 months.

(3) The public partner may claim compensation for the detriment actually sustained which exceeds the amount of the compensations and damages referred to in Paragraphs (1) and (2) according to the standard procedure under the legislation in force.

Article 37. In the cases referred to in Article 46(2) of the Act, the private partner shall notify the public partner within ten days of the subcontractor selected by the private partner.

Chapter Seven

MONITORING AND CONTROL OF PERFORMANCE OF PPP CONTRACTS AS CONCLUDED

Article 38. (1) Monitoring and ongoing control shall be carried out upon performance of PPP

contracts, ensuring effectiveness and efficiency of processes.

(2) Ongoing control shall be exercised by the public partner under terms and according to a procedure established by the PPP contract.

(3) Ongoing control shall include, as a minimum, a periodic check of the fulfilment of all obligations under the PPP contract, including of the quality of the technical or social infrastructure facility and/or of the activity of general interest carried out, on the basis of requirements, technical specifications, quality standards and/or quality criteria set by a statutory instrument, by an administrative act or by the contract.

(4) Ongoing control shall be carried out by:

1. officials of the State or municipal administration or body governed by public law concerned, and/or

2. a control commission.

(5) The rights, obligations and responsibilities of the persons carrying out ongoing control, as well as the composition of the control commission, shall be determined by an order of the public partner.

(6) Control over particular obligations of the private partner may be commissioned by means of a contract to an external contractor.

(7) Ongoing control shall be exercised by means of control of documents and on-site inspections.

(8) On-site inspections may be conducted by persons designated by the public partner and/or through other authorities depending on the specificity of the inspection.

(9) The costs of ongoing control shall be for the account of the public partner.

Article 39. (1) Monitoring of the performance of effective PPP contracts in the country shall be carried out on the basis of annual accounts and, to this end, not later than the 31st day of March:

1. the public partners for State PPPs and PPPs of State bodies governed by public law shall present annual reports on the performance of the PPP contracts to the Minister of Finance;

2. the municipality mayors for municipal PPPs and PPPs of municipal bodies governed by public law shall present annual reports on the performance of the PPP contracts to the municipal councils.

(2) On the basis of the reports referred to in Item 1 of Paragraph (1), the Minister of Finance shall present to the Council of Ministers an annual report regarding the implementation of the National PPP Programme and the Operational Plan.

(3) For the purpose of implementation by the Minister of Finance of the functions thereof referred to in Article 17(2) of the Act, the public partners shall dispatch a copy of the reports referred to in Article 29(2) herein to the Ministry of Finance within ten days after receiving the said reports.

(4) For the purposes of public finance accounting and statistics, the Minister of Finance may require from the parties to a PPP contract to submit reports and other information, and shall specify the content, form and deadline for submission.

Chapter Eight

PPP REGISTER

Article 40. (1) The PPP register referred to in Article 24(1) of the Act, hereinafter referred to as “the register”, shall be established and maintained by the Ministry of Finance.

(2) The register shall be maintained as a single electronic database wherein data shall be recorded by officials designated by the Minister of Finance or by the public partner concerned according to Article 24(3) of the Act.

Article 41. (1) The register shall contain:

1. the National Public-Private Partnership Programme and the Operational Plan for each programming period;

2. the municipal PPP projects and the PPP projects of the municipal bodies governed by public law included in the municipal development plan implementation programmes;

3. the decisions and resolutions on initiation of procedures for selection of a private partner;

4. the notices of conduct of a procedure for selection of a private partner;

5. the decisions and resolutions on selection of a private partner;

6. the financial and economic analyses;

7. the PPP contracts as concluded, excluding data constituting a trade or technical secret;

8. the report of the Minister of Finance regarding the implementation of the National PPP Programme and the Operational Plan and the annual reports of the public partners on the performance of PPP contracts;

9. information on the performance of PPP contracts of the bodies governed by public law;

10. the supplementary agreements amending or supplementing the PPP contracts as concluded;

11. the contracts extending the PPP contracts with a successor in title;
12. the decisions or resolutions terminating PPP contracts;
13. the opinions of the Minister of Finance referred to in Article 18(6) herein;
14. the contracts with an external contractor referred to in Article 19(3), excluding the data constituting a trade secret.

(2) Personal data and data constituting classified information shall not be entered into the register.

(3) Only the documents and circumstances provided for in the Regulations and the subsequent changes therein shall be subject to recording.

(4) The new circumstances shall be recorded in such a manner as not to affect the information contained in the preceding records.

(5) A circumstance recorded shall be deleted and an error made shall be corrected in such a manner as the information would not be destroyed or damaged, after obtaining authorisation from the Ministry of Finance according to the procedure established by Article 43 herein.

Article 42. (1) The register shall be open to public inspection.

(2) The information in the register shall be freely accessible at no charge through the Internet site of the Ministry of Finance.

(3) The public partners recording information in the register shall ensure public access thereto by indicating a link to the said register through the Internet sites hosted thereby.

Article 43. (1) The Minister of Finance and the public partners shall create the necessary conditions for making the records as provided for and for exercising direct control over the activity of recording data in the register.

(2) The steps of recording data in the register shall be performed by officials designated by an order of the competent authority under Paragraph (1) and after obtaining service access rights from the Ministry of Finance. The order shall furthermore designate the official who is to exercise direct control over the activity of entering data into the register.

(3) The officials referred to in Paragraph (2) shall be responsible for the authenticity of the information entered and for meeting the deadlines for the entering of the said information.

Article 44. (1) The registration of the public partner concerned and the granting of service access rights to the officials designated thereby as responsible for entering the information under Article 41 herein shall be effected by the Ministry of Finance.

(2) Service access rights shall be granted by officials designated by an order of the Minister of Finance within seven days after receipt of an application from the public partner concerned.

(3) By an order, which shall be published on the Internet site of the Ministry of Finance, the Minister of Finance shall determine:

1. the electronic format and the technical requirements regarding the information covered under Article 41 herein;
2. the procedure for granting service access rights.

Article 45. The computer database shall be maintained in a manner ensuring the integrity of the information and a controlled access to records and browsing according to the requirements of the Regulations.

Article 46. The documents subject to recording in the register, as well as the changes therein, shall be entered within 14 days after the adoption or, respectively, after the entry into effect thereof.

FINAL PROVISION

Sole Paragraph. These Regulations are adopted in pursuance of § 2 (1) of the Transitional and Final Provisions of the Public-Private Partnership Act.

Annex 1

to Article 14(3)

Section I. Minimum Requirements to the Pre-development Study or a Development-Project Design:

The pre-development study or the development-project design shall be developed according to the requirements of the ordinance referred to in Article 135(5) of the Spatial Development Act with a content and scope according to the specificity of the activity of general interest.

Section II. Minimum Requirements to the Financial and Economic Analysis¹:

The financial and economic analysis shall include elaboration of:

1. A general analysis of the strategic needs of the public service at the time of preparation of the analysis and in future and defining the strategic socio-economic objectives;
2. Input specification with identified qualitative and quantitative characteristics of the activity of general interest, including applicable quality and availability standards of the activity of general interest;
3. Analysis of the technical variants (options) and evaluation of the feasibility thereof, including technical, design, legal and financial aspects;
4. Legal justification of the legal conformity of implementation of the project;
5. Technical and economic evaluation and choice of a technical option (options), including:
 - (a) financial analysis and calculation of the indicators of financial effectiveness (financial net present value (FNPV), financial internal rate of return (FIRR) etc.) from the perspective of a private investor; in case FNPV is positive (FNPV > 0), the project must not be implemented by means of PPP;

(b) public sector comparator (PSC) and defining a PSC model; economic analysis and calculation of the indicators of socio-economic effectiveness (economic net present value (ENPV), economic internal rate of return (EIRR) etc.) for society; if $ENPV < 0$, the project must not be implemented;

(c) risk assessment;

(d) building a risk-adjusted PSC model;

6. Defining a project with a PPP scheme of implementation for the chosen technical option (options);

7. Test for feasibility of the PPP scheme;

8. Financial analysis of the PPP scheme and calculation of the indicators of financial effectiveness: FNPV of the investment and of the capital, FIPR of the investment and of the capital, financial sustainability:

(a) investment costs;

(b) current costs and revenues;

(c) financial return on the investment;

(d) sources of financing;

(e) forms and amount of financial support;

(f) financial sustainability;

(g) financial return on capital to the private partner;

9. Economic analysis of the PPP scheme and calculation of the indicators of socio-economic effectiveness: ENPV, EIRR, for society;

10. Risk assessment;

11. Building a risk-adjusted PPP reference model;

12. Comparative analysis between a risk-adjusted PSC model and a risk-adjusted PPP model for the purpose of proving the better value for money from invested public funds, including:

(a) comparison between the present values of public expenditures with risk adjustment in the two models;

(b) comparison between the indicators of socio-economic effectiveness for society in the two variants;

13. Evaluation of the affordability to the budget on the basis of:

(a) all estimated payments on the part of the public partner for the implementation of the project for the entire duration;

(b) current budget and its current implementation;

(c) report on the implementation of the budget for the last three years;

(d) projected budget for the next succeeding at least three years, specifying sources for financing the payments referred to in letter (a);

(e) legal and other financial limitations of the budget;

14. Determining the economic balance between the partners on the basis of the indicators of financial effectiveness of the PPP scheme;

15. Analysis for compatibility of the project with the legislation in the State aid field.

Section III. Minimum Requirements to the legal analysis:

The legal analysis shall comprise the following components:

1. Specifying the scope and the legal regime of the activity of general interest which is subject to PPP;

2. Identifying and analysing the presence of conditions for establishment of PPP under Article 3(2) of the Act, including an analysis of the regulatory possibilities for and/or limitations on collecting revenues from the users of the service of general interest or from other third parties in connection with the activity of general interest; analysis of the possibility to assign the collection of these revenues to the private partner.

3. Identifying and analysing the ownership of the facility whereby the activity of general interest is to be carried out subject to the PPP contract, including the existence of prohibitions, limited rights *in rem*, existing rights to the facility, other encumbrances.

4. Analysis and conclusion regarding the legal conformity of the proposed

form of financial support and the existence of legal impediments to its provision, including regarding its compatibility with the legislation in the State aid field.

5. Conclusion and recommendations regarding the fulfilment of the legal requirements for implementation of PPP.

Annex 2

to Article 12(2)

Methodology for Determining the Amount of Remuneration for Data from a Pre-development Study or from a Development-Project Design, Developed by an Interested Party and Used in the Technical Specifications

1. This methodology regulates the manner of determining the amount of remuneration to an interested party under Article 12(2).

2. The remuneration to the interested party shall be to an amount equal to the reported direct costs as certified by a registered auditor which the interested party has incurred for development of the pre-development study or the development-project design or of the part of the said study or design which the public partner has used for development of the technical specifications in the contract documents or in the descriptive document, which may not exceed 1 per cent of the estimated value of the project according to the notice.

3. Direct costs shall be those costs which are directly related to the development of the pre-development study or the development-project design or the relevant part thereof. The said costs shall include:

(a) costs of remunerations and social security payments of the employees who performed the development and of those who carried out control, supervision or monitoring activity;

(b) costs of remunerations and social security payment of the management staff and other staff involved;

(c) costs of materials;

(d) capital costs relevant to the development;

(e) costs of hired services directly related to the development;

(f) other direct costs relevant to the development.

4. The direct costs within the meaning given by Item 3 shall be calculated as follows:

(a) under letters (a) and (b): in proportion to the distribution of the costs of development on the basis of the annual costs of remunerations and social security payments of the employees;

(b) under letter (c):

(aa) the direct material costs shall be carried over directly to the value of the development on the basis of a consumption rate multiplied by the cost of acquisition;

(bb) in the cases where it is impossible to determine a consumption rate, the ratio of the costs of materials relevant to the development costed to the number of developments of the same kind performed shall be calculated in order to determine the direct material costs for a specified type of development;

(cc) if the methods referred to in letters (aa) and (bb) are inapplicable owing to the fact that the relevant material costs for the separate types of development cannot be determined, the average cost of materials shall be used, reflecting the ratio of the total number of developments performed by the interested party to the costs of materials relevant to the development for the last year;

(c) under letter (d): the costs are directly related to the performance of the development; such costs shall be the costs of purchase of specific software, database, equipment, means of transport etc. relevant to the

development; any such costs shall be carried over to the value of the development according to the method of depreciation charges as a ratio of the costs of the fixed assets as listed, relevant solely and exclusively to the development, to the number of elaborations of this kind submitted during the last year;

(d) under letter (e): the costs of hired services attributable to the development shall be carried over directly to the value of the said development, including where the entire development has been performed through commissioning to an external contractor;

(e) under letter (f): the costs depend directly on the number of developments performed and are easy to differentiate (e.g. costs of domestic business trips); the value of any such costs shall be carried over directly to the value of the development.

5. Indirect costs shall not be included in the value of the development.

6. The amount of the remuneration shall be calculated according to the formula:

$R_j = DC_j$, where:

R_j is the amount of the remuneration;

DC_j are the direct costs of the development (j);

7. The direct costs shall be calculated according to the formula:

$DC_j = T_j \times AHRDRS + AHRMS + CM_j + CRFA_j + CHS_j + ODC_j$, where:

T_j is the time for performance of the respective part of the development;

AHRDRS is the average value of the hourly rate of the directly responsible staff;

AHRMS is the average value of the hourly rate of the management staff;

CM_j are the costs of materials for the development (j);

CHS_j are the costs of hired services for the development (j);

$CRFA_j$ are the costs of fixed assets relevant to the development (j);

ODC_j are the other direct costs relevant to the development (j).

8. The public partner shall commission the certification of the direct costs to a registered auditor under the terms and according to the procedure established by the Public Procurement Act. The costs of commissioning shall be for the account of the public partner.

¹ *Guide to Cost-Benefit Analysis of Investment Projects* of the European Commission and *Methodological Directions for Public-Private Partnership* of the Ministry of Finance, maintained at www.minfin.bg, can be used as guidance for the elaboration of the financial and economic analysis.