

THE CROATIAN PARLIAMENT

3561

Pursuant to Article 88 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

PROMULGATING THE CONCESSIONS ACT

I hereby promulgate the Concessions Act passed by the Croatian Parliament at its session on 17 October 2008.

Class: 011-01/08-01/136

No.: 71-05-03/1-08-2

Zagreb, 22 October 2008

The President of the Republic of Croatia

Stjepan Mesić, m.p.

CONCESSIONS ACT

I - GENERAL PROVISIONS

Subject-matter of the Act

Article 1

(1) This Act regulates the procedures for the award of concessions, termination of concessions, legal protection in the procedures of award and termination of concessions, and other issues related to concessions.

(2) For the purpose of this Act:

- *Concessions for the right to exploit a common good or other goods* means a contractually regulated legal relationship the subject-matter of which is the exploitation of a common or other good legally defined as of interest to the Republic of Croatia.

- *Public works concessions* means a contractually regulated legal relationship the subject-matter of which is the performance of works or works and design, and which relate to one or more of the activities either laid down by law regulating a specific concession or listed in Annex I of the legislation regulating public procurement, if the consideration for the works to be carried out consists either solely in the right to exploit the work or in this right together with payment.

- *Public service concessions* means a contractually regulated legal relationship the subject-matter of which is the performance of one or more services which are in general interest and

which are either laid down by law regulating a specific concession or listed in Annex II of the legislation regulating public procurement, if the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.

Meaning of terms

Article 2

For the purpose of this Act, these terms shall have the following meaning:

1. *Concession grantor* is a body or a legal person authorised to award concessions under this Act.
2. *Concessionaire* is a natural or legal person with whom the concession grantor signed a concession contract.
3. *Concession contract* is a contract signed between the concession grantor on the one side and the concessionaire on the other, which contains stipulations regulating mutual rights and obligations arising from the use of the awarded concession.
4. *Concession fee* is the fee that the concessionaire pays pursuant to the concession contract.
5. *Concessions Register* is an integrated electronic record of concession contracts awarded in the territory of the Republic of Croatia.
6. *Decision on the selection of the most advantageous tenderer* is an administrative act passed by the concession grantor at the proposal of an expert commission for concessions, following an evaluation of the tenders submitted for the award of concession and in accordance with the tender documents and the criteria for the selection of the most advantageous tender.
7. *Written or in writing* means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. Such an expression may include information which is transmitted and stored by electronic means.
8. *Tenderer* is a legal or natural person that has submitted a tender for the award of concession.

Concession grantor

Article 3

A concession grantor may be:

- (a) the Croatian Parliament, the Government of the Republic of Croatia, central state administration bodies, on behalf of the Republic of Croatia,
- (b) the competent bodies of local and regional self-government units, on behalf of the local and regional self-government units, and
- (c) legal persons authorised to award concessions under special regulations.

Object of concession

Article 4

(1) A concession may be awarded in various fields and for various activities, in particular:

1. for the exploitation of mineral raw materials,
2. for the exploitation of waters and public water domain,
3. for the right to hunt in the state owned hunting ground and game farms,
4. on maritime domain,
5. on agricultural land,
6. for certain activities within protected natural areas, and for use of other protected natural resources and speleological formations,
7. for games of chance,
8. in the energy sector,
9. for providing line and coastal maritime and river transport,
10. for ports,
11. for public roads,
12. for public transport,
13. for airports,
14. in the area of sports,
15. on cultural domains,
16. for utility activities,
17. in the railway sector,
18. for the commercial exploitation of the funicular,
19. for waste management, and
20. in the field of tourism.

(2) A concession may not be awarded on forests and forest land owned by the Republic of Croatia or on other domains defined by special regulations.

(3) The conditions, procedure, method and other significant issues for awarding concessions in various fields and for various activities referred to in paragraph 1 of this Article are governed by special regulations.

Exemptions from the Act

Article 5

(1) This Act shall not apply to:

1. the concessions which are designated as classified pursuant to regulations of the Republic of Croatia or whose implementation requires the application of information security measures pursuant to laws or other regulations of the Republic of Croatia,

2. the concession which is, in accordance with international agreements which the Republic of Croatia concluded with one or several other states, intended for joint implementation or use of the projects,

3. the concession which is awarded in accordance with special procedural rules of international organisations.

(2) In the case of the award of concessions referred to in paragraph 1, items 2 and 3 of this Article, the concession grantor shall, before the commencement of the concession award procedure, notify the European Commission accordingly.

Article 6

(1) The provisions of Title III, IV, V, VI and VII of this Act shall not apply to concessions for providing radio and television services.

(2) The procedure for the award of concessions laid down in Title III of this Act shall not apply to awarding public service concessions and concessions for the right to exploit common good or other goods:

- on agricultural land,
- for games of chance.

(3) Without prejudice to the principles of the procedure for the award of concessions laid down in Article 17 of this Act, the procedure for the award of concessions referred to in paragraph 2 of this Article shall be further regulated by a special act.

Article 7

(1) The owner of the immovable property where the activities under the planned concession will be carried out shall be a party in the procedure for the award of the concession.

(2) If the Republic of Croatia is the owner of the immovable property where the activities under the planned concession will be carried out, the state attorney's office shall be involved in the procedure for the award of the concession.

(3) Where the concession is awarded for the exploitation of the common good, the competent state attorney's office shall be involved in the procedure for the award of the concession.

Article 8

The provisions of the regulations governing public procurement shall apply to the confidentiality of the documents in concession award procedures.

II - PREPARATORY ACTIONS FOR THE AWARD OF CONCESSIONS

Article 9

(1) Preparatory actions for the award of a concession shall be performed by the concession grantor.

(2) Preparatory actions shall particularly imply the following:

- estimating the concession value,
- preparing a concession justification study,
- appointing an expert commission for the concession,
- preparing tender documents, and
- all other measures preceding the concession award procedure, in accordance with the provisions of this Act and special regulations which further regulate a specific type of a concession.

Concession value estimation

Article 10

(1) Estimating the value of public services and public works concessions shall be governed by the corresponding provisions of the regulations governing public procurement.

(2) Estimating the value of a concession for the exploitation of a common or other good shall be governed by the corresponding provisions of the regulations governing the specific type of the concession.

Concession justification study

Article 11

When preparing the concession justification study, the concession grantor shall give special consideration to public interest, impact on the environment, protection of nature and cultural property, financial impacts of the concession on the state budget or the budget of

local and regional self-government units, and compliance with the economic development plans and plans of the concession grantor.

Expert commission for concessions

Article 12

(1) Prior to the commencement of the procedure for the award of concessions, the concession grantor shall appoint an expert commission for concessions from the ranks of eminent experts in law, economy, technical and other relevant fields, depending on the object of the concession. The number of members in the expert commission shall be odd, but may not exceed 7 members. Members of the expert commission shall not have direct or indirect personal interests in any of the activities that could lead to a conflict between those personal interests and their duties as members of the expert commission.

(2) The concession grantor shall notify the ministry competent for finance on the intention of establishing the expert commission referred to in this Article.

(3) The ministry competent for finance may appoint its representative to the expert commission within ten days from the day of notification referred to in paragraph 2 of this Article, respecting the maximum allowed number of members as defined in paragraph 1 of this Article.

(4) By way of derogation from paragraphs 1, 2 and 3 of this Article, tasks of the expert commission referred to in paragraph 5 of this Article in the case of concessions for providing radio and television services shall be performed by an independent regulatory body in accordance with the provisions of special regulations.

(5) The tasks of the expert commission for concessions are the following:

1. assisting the concession grantor in the preparation of necessary analyses and/or justification studies for the award of the concession, in the preparation and drawing up of conditions and tender documents, the rules and conditions for the evaluation of tenderers and received tenders, and tender selection criteria,
2. analysing the concession project proposal to determine whether the project is a public-private partnership project as specified by the regulations governing public-private partnership,
3. reviewing and evaluating tenders received,
4. formulating the proposal of the decision on the selection of the most advantageous tenderer for the award of the concession or a proposal of the decision on the cancellation of the concession award procedure, as well as an exposition thereof,
5. notifying the competent state attorney's office on the intention of awarding a concession for the exploitation of a common or other good, and
6. carrying out of other tasks required by the concession award procedure.

(6) The expert commission for concessions shall keep records of its work which shall be signed by all commission members.

Public-private partnership projects

Article 13

(1) When conducting the analysis referred to in Article 12, paragraph 5, item 2 of this Act, the expert commission shall apply the criteria laid down by the regulations governing public-private partnerships.

(2) The expert commission shall, in the procedure referred to in paragraph 1 of this Article, cooperate with the body responsible for the approval of public-private partnership projects.

(3) Should the expert commission ascertain, when conducting the procedure referred to in paragraph 1 of this Article, that the concession has the characteristics of a public-private partnership project, the relevant provisions of the regulations governing public-private partnership shall apply in the part relating to the proposal and approval of public-private partnership projects.

Tender documents

Article 14

(1) The tender documents shall contain the tender format, the tender content, validity term of the tender, description of the object of concession (technical specifications), draft concession contract, the conditions and evidence which the tenderers must submit along with their tender to prove that they meet the suitability criteria for tenderers, the request for submission of a detailed list of entities referred to in Article 33, paragraphs 9 and 10 of this Act, the deadline for passing the decision on the selection of the most advantageous tenderer, including all other requirements that the tenderer must fulfil.

(2) If, pursuant to a special regulation, the concession grantor or other body governed by public law are entitled to either determine the price which the concessionaire will be paid by the final beneficiaries or to grant approval of the concessionaire's price list of public services, this right, as part of the provisions of the concession contract which is the subject-matter of tendering, should be an integral part of the tender documents.

(3) The description of the object of concession (technical specifications) must not restrict competition in the procedure for the award of concessions.

(4) The tender documents must be drafted in the manner which allows the comparison of tenders for the award of respective concessions.

(5) The concession grantor may list in the tender documents the bodies where the legal and/or natural person interested in participating in the concession award procedure may obtain information about the obligations related to taxes, contributions, and other tax charges, related to the protection of the environment, nature and cultural good, energy efficiency, provisions on the health and safety at work and working conditions which are in force in the areas where the activities specified in the concession contract will be carried out.

(6) In the procedures for the award of concessions, each legal and/or natural person interested in participating in the concession award procedure shall be provided an equal

opportunity to access all documents necessary to draw up a tender, or to purchase the documents.

(7) The concession grantor shall set in advance the fee for access to or purchase of the documents necessary to draw up a tender.

(8) The fee referred to in paragraph 7 of this Article shall be the revenue of the state budget, or the budget of the local and regional self-government units if they are the concession grantors.

(9) Information on the legal and/or natural person who have requested access to the documents or who have purchased the documents shall be kept confidential in accordance with Article 8 of this Act.

(10) If corrections or changes to the tender documents are necessary during the time limit for the receipt of tenders, the tender documents shall be supplemented, changed or corrected in accordance with particularities in the award of the concession in question and, if necessary, the publication of the notice of intent to award a concession shall also be changed or corrected, while the time limit for the receipt of tenders shall be extended accordingly.

(11) The concession grantor shall ensure access to changes and corrections referred to in paragraph 10 of this Article in good time for all legal and/or natural persons that expressed their interest in participating in the concession award procedure.

(12) The provisions of the regulations governing public procurement shall correspondingly apply to all other matters relating to the content of the tender documents for public works concessions.

Tender Guarantee

Article 15

(1) Prior to the commencement of the concession award procedure, the concession grantor shall specify in the tender documents and the notice of intent to award a concession the tender guarantee which the tenderer must submit.

(2) The type and value of guarantee shall be determined depending on the particularities of the award of individual type of concessions, and in accordance with the estimation of the concession grantor and the special regulations governing respective concessions.

(3) The expert commission referred to in Article 12 of this Act shall propose the type and value of individual guarantee.

(4) The concession grantor shall set the absolute amount of the tender guarantee. The tender guarantee, except in justified cases, may not exceed 5% of the estimated concession value.

(5) If undrawn, the tender guarantee must be returned not later than 10 days after the adoption of the decision on the selection of the most advantageous tenderer or after the adoption of the decision on the cancellation of the procedure for the award of the concession.

(6) If the decision on the selection of the most advantageous tenderer is not made within the stipulated period, the tender guarantee shall be returned not later than 14 days after the expiry of the time limit for the adoption of the decision concerned, unless the concession

grantor requested an extension of the validity of the guarantee in accordance with the requested extension of the term of validity of the tender.

(7) The tender guarantee shall be returned immediately if the tender is not being considered for the award of the concession.

(8) All matters relating to tender guarantees in the award of public works concessions shall be governed by the provisions of the regulations governing public procurement.

III - THE PROCEDURE FOR THE AWARD OF CONCESSIONS

General provisions

Article 16

(1) The procedure for the award of concessions shall commence on the day of publication of the notice of intent to award a concession in the Official Gazette, and shall terminate once the decision on the selection of the most advantageous tenderer or the decision on the cancellation of the concession award procedure becomes final.

(2) Without prejudice to the principles of the procedure for the award of concessions laid down in Article 17 of this Act, matters related to the procedure for the award of a public service concession or a concession for the exploitation of a common or other good not regulated by this Act may be further regulated by a special act.

(3) Regulations governing public procurement shall correspondingly apply to the procedure for the award of concessions for public works, where:

a) the relevant provisions concerning procurement of lesser value shall apply to the procedure for the award of concessions for public works where the total contract value exclusive of value added tax is equal to or lower than HRK 36,000,000.00 and

b) the relevant provisions of the regulations governing public procurement shall apply to the procedure for the award of concessions for public works where the total contract value exclusive of value added tax is greater than HRK 36,000,000.00.

(4) The provisions of this Act, with the exception of the provisions of Articles 17 to 25 of this Act, shall apply to concessions referred to in paragraph 3 of this Article.

(5) The amount referred to in paragraph 3 of this Article may be amended by a decision of the Government of the Republic of Croatia.

(6) The procedure for the award of concessions for public works referred to in paragraph 3 of this Article shall not apply to the award of concessions for public works for carrying out one of the following activities when the concession is awarded by a concession grantor which carries out this activity:

- a) in the gas, heat and electricity sectors
- b) in the field of water management (water supply, waste water services, protection against harmful effects of waters, irrigation etc.),
- c) for transport services,
- d) for postal services,

- e) in exploration and extraction of oil, gas, coal and other solid fuels, as well as in ports and airports.

(7) Without prejudice to the principles of the procedure for the award of concessions laid down in Article 17 of this Act, the provisions of this Act shall apply to the procedure for the award of concessions referred to in paragraph 6 of this Article, while certain matters related to concession award may be further regulated by a special act.

Principles of the procedure for the award of concessions

Article 17

In the procedures for the award of concessions referred to in this Act, in transactions with all legal and natural persons the concession grantors shall observe the principle of the free movement of goods, the principle of freedom of establishment, the principle of the freedom of to provide services, the principle of efficiency and other fundamental principles of the Constitution of the Republic of Croatia, as well as those from the Treaty establishing the European Community, such as the principle of competition, the principle of equal treatment, the principle of non-discrimination, the principle of mutual recognition, the principle of proportionality and the principle of transparency.

Notice of intent to award a concession

Article 18

- (1) The concession grantor shall announce its intent to award a concession by a notice.
- (2) The notice of intent to award a concession shall contain the following information:
 - 1. Name, address, telephone number, fax number, and e-mail of the concession grantor;
 - 2.
 - (a) Object of concession,
 - (b) Nature and scope of the concession activities,
 - (c) Place of performance of the concession,
 - (d) The period of concession;
 - 3.
 - (a) Time limit for the submission of tenders,
 - (b) The address where the tenders are to be sent,
 - (c) The language/languages and alphabet/alphabets in which tenders must be drawn up;
 - 4. Personal, professional, technical and financial conditions which the tenderers must fulfil, and the documents to prove this;
 - 5. The criteria which shall be applied to the selection of the most advantageous tenderer;

6. Date of dispatch of the notice;

7. Name and address of the body authorized for deciding on the appeals and the information about the time limits for submitting appeals.

(3) The notice of intent to award a concession shall contain the information on the type of procedure based on which the concession shall be awarded.

(4) The notice of intent to award a concession may contain other information in accordance with special regulations.

(5) The notice of intent to award a concession shall be published in the Official Gazette, and after that, provided there are no modifications in the contents, the notice may be published in other mass media and on the web site of the concession grantor, quoting the date of publication in the Official Gazette.

Tender submission

Article 19

(1) The tender shall be submitted in written form in a sealed envelope bearing the address of the concession grantor, the concession award procedure concerned, the remark "do not open" and the address of the tenderer.

(2) The tender shall be binding on the tenderer which submitted it until the expiry of the term of validity of the tender;

(3) The tenderer cannot amend its tender for the duration of the time limit for the submission of tenders.

Time limit for the submission of tenders

Article 20

The time limit for the submission of tenders shall last for at least 30 days from the date of publication of the notice on the intent to award a concession in the Official Gazette.

Criteria for the selection of the most advantageous tender

Article 21

(1) The criteria on which concession grantors shall base the selection of the most advantageous tender shall be either:

1. when the award is made to the tender most economically advantageous from the point of view of the concession grantor, various criteria linked to the subject-matter of the concession in question, for example: quality, fee amount, price, technical merit, aesthetic, functional and environmental characteristics, running costs, cost-effectiveness, after-delivery service and technical assistance, delivery date and delivery period or period of completion, or

2. the highest fee offered for the concession.

(2) When the most advantageous tenderer is selected based on the criterion of the most economically advantageous tender, the concession grantor shall specify in the tender documents and in the notice on the intent to award a concession relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender. Those weightings can be expressed by providing for a range with an appropriate maximum spread. Where this is not possible due to justified reasons, the concession grantor shall indicate in the notice on the intent to award a concession, the criteria in descending order of importance.

(3) The concession grantor shall set, define and apply when conducting the concession justification study, the criteria laid down in special regulations which indicate the long-term sustainability of the tenderer during the implementation of the concession in the foreseen time period.

Decision on the selection of the most advantageous tenderer

Article 22

(1) The concession grantor shall issue a decision on the selection of the most advantageous tenderer to whom it shall offer the signing of the concession contract.

(2) The concession grantor shall send the decision on the selection of the most advantageous tenderer, with a copy of the minutes of the examination and evaluation of tenders, to each tenderer by registered mail with a return receipt, or in some other way with proof of delivery.

(3) The copy of the minutes of the examination and evaluation of tenders shall not violate the provisions of the regulations concerning the confidentiality of documents in concession award procedures.

(4) The concession grantor may not sign the concession contract before the expiry of the standstill period, which shall last for 15 days from the date of delivery of the decision on the selection of the most advantageous tenderer to all the tenderers.

(5) Upon expiry of the standstill period referred to in paragraph 4 of this Article and provided that the procedure of legal protection was not instituted, the concession contract between the concession grantor and the selected tenderer may be signed.

(6) If the procedure of legal protection was instituted, the concession contract may be signed when the decision on the selection of the most advantageous tenderer becomes final, i.e. if the appeal is dismissed or rejected.

Time limit for issuing the decision on the selection of the most advantageous tenderer

Article 23

(1) The time limit for issuing the decision on the selection of the most advantageous tenderer must be reasonable and shall begin on the date of expiry of the time limit for the

submission of tenders. Unless specified otherwise in the tender documents, the time limit for issuing the decision on the selection of the most advantageous tenderer shall be 30 days.

(2) The tenderer may extend the term of validity of its tender at the request of the concession grantor.

(3) If the concession grantor fails to issue a decision on the selection of the most advantageous tenderer and to send it to the tenderer within the fixed time limit, the tenderer is entitled to appeal on grounds of non-compliance with statutory terms.

Content of the decision on the selection of the most advantageous tenderer

Article 24

(1) A decision on the selection of the most advantageous tenderer shall contain the following:

1. name of the concession grantor with the number and date of the decision,
2. name of the tenderer,
3. the object of concession,
4. the nature, scope and place of performance of the concession activities,
5. the period of concession,
6. special criteria which the tenderer has to fulfil during the period of concession,
7. the amount of the concession fee or the basis for establishing the concession fee which the concessionaire will pay,
8. the time limit within which the most advantageous tenderer must sign the concession contract with the concession grantor,
9. an explanation of reasons for choosing the tenderer,
10. legal remedy,
11. the signature of the responsible person and stamp of the concession grantor.

(2) The decision on the selection of the most advantageous tenderer may contain other relevant data in accordance with the tender documents, the received tender, and the provisions of special regulations governing concessions.

Decision on the cancellation of the concession award procedure

Article 25

(1) The concession grantor shall cancel the concession award procedure after the expiry of the time limit for the submission of tenders in the following cases:

1. if circumstances become known which, had they been known before the commencement of the concession award procedure, would have resulted in the non-publication of the notice of intent to award a concession or in the publication of a substantially different notice, or

2. if no tender has been submitted by the expiry of the time limit for the submission of tenders, or

3. if after the rejection of tenders in the concession award procedure no acceptable tender remains,

4. if selection cannot be made based on the most advantageous tenderer criteria.

5. in other cases laid down by special regulations.

(2) The concession grantor may cancel the concession award procedure if only one tender is received by the expiry of the time limit for the submission of tenders, or if after the rejection of tenders in the procedure only one acceptable tender remains.

(3) In the case of circumstances referred to in paragraphs 1 and 2 of this Article, decision on the cancellation of the concession award procedure shall be passed by the concession grantor.

(4) The concession grantor shall send the decision on the cancellation of the concession award procedure together with a copy of the minutes of the examination and evaluation of the tenders to each tenderer without any delay by registered mail with return receipt, or in some other way with proof of delivery.

(5) The ten-day time limit for instituting the legal protection procedure in accordance with the regulations governing public procurement shall commence on the date of delivery of the decision on the cancellation of the concession award procedure.

(6) A new concession award procedure may be initiated after the decision on the cancellation of the concession award procedure becomes final.

IV - CONCESSION CONTRACT

Signing the concession contract

Article 26

(1) The concession grantor shall offer the most advantageous tenderer to sign the concession contract within ten days from the date on which the decision on the selection of the most advantageous tenderer became final.

(2) The time limit set in paragraph 1 of this Article may be extended in justifiable cases laid down by special regulations governing concessions and in accordance with Article 24, paragraph 1, item 8.

(3) By way of derogation from paragraph 1 of this Article, in the award procedure for a concession which forms part of a public-private partnership project, the time limit for signing the concession contract is determined in accordance with the regulations governing public-private partnerships.

(4) The concession contract shall be drawn up in writing and signed by the authorised person of the concession grantor and the selected most advantageous tenderer.

(5) Upon signing the concession contract, the concessionaire shall become entitled to and shall assume the obligation to carry out the activities under the concession contract.

(6) The concession contract must be drawn up in accordance with the tender documents, the data contained in the notice of intent to award a concession, the selected tender and the decision on the selection of the most advantageous tenderer.

(7) Prior to signing the concession contract, the concession grantor shall collect from the selected most advantageous tenderer the necessary guarantees and/or security instruments for payment of the concession fee and the compensation of potential damages incurred due to the non-fulfilment of obligations under the concession contract (debentures, bank guarantees, personal guarantees, bills of exchange, etc.), in accordance with the evaluation of the expected value arising from the concession contract.

(8) Guarantees and security instruments referred to in paragraph 7 of this Article shall be stored in an appropriate place with the concession grantor, which shall keep them during the validity of this concession contract in accordance with the provisions of this Act.

Content of the concession contract

Article 27

(1) The concession contract shall specify the rights and obligations of the concession grantor and concessionaire in accordance with provisions of this Act, and other special regulations governing the particular concession.

(2) Concession contract matters which are not regulated by this Act shall be governed by the provisions of the regulations governing obligations.

(3) In the case of a concession which forms part of a public-private partnership project, the regulation governing the content of a public-private partnership contract shall apply correspondingly.

The concession fee

Article 28

(1) The concessionaire shall pay a fee for the concession in the amount and in the manner stipulated in the concession contract, unless the payment of the concession fee is not economically justified.

(2) The concession fee may be specified in the contract as a set constant amount and/or variable amount, depending on the special characteristics of each individual concession.

(3) The concession fee shall be determined based on the type of activity, the period of concession, business risk and expected profit, level of equipment and the surface area of the general or public good.

(4) The concession contract may specify the adjustment of the concession fee in a certain period during the concession contract, which shall be indicated in the tender documents.

(5) Concession fees are the revenue of the state budget and/or the budgets of local and regional self-government units.

(6) The ratio of distribution of revenues generated from the concession fees referred to in paragraph 5 of this Article shall be specified in special regulations governing concessions.

(7) For the duration of the concession contract, the concession grantor may not lay down or contract with the concessionaire any form of compensation in lieu of the consideration of the concession fee.

The term of concession

Article 29

(1) The term of the concession must be determined in a manner so as not to restrict competition more than necessary in order to ensure amortisation of the concessionaire's investment and a reasonable return on investment, taking into account the risk related to the exploitation of the concession.

(2) The time limit for which the concession is being awarded must be determined in accordance with the provisions of special regulations governing concessions.

(3) The time limit for which the concession was awarded shall run from the day of signing of the concession contract.

(4) The time limit for which the concession was awarded may not be extended, except in the case the concessionaire cannot carry out the activity under the concession for reasons not attributable to the concessionaire.

(5) The time limit for which the concession for the right to exploit the common good or other goods was awarded may be extended without undertaking a new concession award procedure if such an extension is required by the interests of the Republic of Croatia and if it does not exceed 50% of the initially determined duration of the concession.

(6) The interests of the Republic of Croatia referred to in paragraph 5 of this Article shall be determined by the Croatian Parliament.

Subcontracting

Article 30

(1) Where the total value of the concession for public works, exclusive of value added tax (VAT), exceeds HRK 36,000,000.00, the concessionaire may subcontract certain works under the concession contract to a national or foreign legal or natural person authorised to carry out the works in the manner and under the conditions stipulated by the provisions of the concession contract.

(2) The subcontract referred to in paragraph 1 of this Article may not be concluded without prior approval of the concession grantor.

(3) Where a subcontract referred to in paragraph 1 of this Article is awarded, the concession grantor may:

(a) request that the concessionaire awards contracts for a minimum of 30% of the total value of works for which the concession contract will be awarded to third parties, providing the tenderers with the possibility to increase the aforementioned percentage and indicate it in the concession contract, or

(b) request that the tenderers indicate in their tenders the percentage, if applicable, of the total value of works under the concession contract which they intend to award to third parties.

(4) Provisions of the regulations governing public procurement shall not apply to the procedure for award of subcontracts which are indicated in the concession contract.

(5) Provisions of the regulations governing public procurement shall not apply to goods, works and services procured by the concessionaire from the affiliated companies as defined in Article 33, paragraph 10 of this Act.

(6) The concessionaire shall not be entitled to award a subconcession.

Awarding additional works to concessionaires

Article 31

(1) In the case of a public works concession, the concession grantor may, without conducting a new concession award procedure, award additional works which were not included in the initially examined concession project or the basic concession contract, and which became essential for the performance of the described works due to unforeseen circumstances.

(2) Additional works referred to in paragraph 1 of this Article may be awarded:

- when such additional works cannot be technically or economically separated from the initial contract without causing major difficulties to the concession grantor, or
- when such additional works may be separated from the initial works, but are essential for their completion.

(3) The total value of the contract awarded for additional works may not exceed 50% of the amount of the basic concession contract.

(4) The concession grantor and the concessionaire shall draw up an annex to the concession contract regarding additional works.

V - SPECIAL RULES APPLICABLE TO CONCESSIONAIRES SIGNING CONCESSION CONTRACTS FOR PUBLIC WORKS WITH A TOTAL VALUE EXCLUSIVE OF VALUE ADDED TAX GREATER THAN HRK 36,000,000.00

Article 32

The concessionaire which is a contracting entity within the meaning of the regulations governing public procurement shall comply with the provisions of the regulations governing

public procurement concerning public works contracts where the works are to be performed by third parties.

Article 33

(1) The concessionaire which is not a contracting entity within the meaning of the regulations governing public procurement shall comply with the rules concerning publication and time limits laid out in this Article when awarding public works contracts to third parties with a total value exclusive of value added tax greater than HRK 36,000,000.00.

(2) The value of contracts referred to in paragraph 1 of this Article shall be calculated in accordance with Article 10 of this Act.

(3) The concessionaire referred to in paragraph 1 of this Article shall publish a notice on the intent to award public works contracts.

(4) The provisions of regulations governing public procurement shall correspondingly apply to the content and manner of publication of the notice referred to in paragraph 3 of this Article.

(5) The time limit for the receipt of requests to participate shall be set by the concessionaire and shall be at least 37 days from the date the notice was sent for publication.

(6) The time limit for the receipt of tenders shall be set by the concessionaire and shall be at least 40 days from the date of the notice was sent for publication or from the invitation to tender.

(7) The provisions on shortened time limits for receipt of tenders and requests to participate when using electronic means in accordance with the regulations governing public procurement shall apply correspondingly to the shortening of time limits referred to in paragraphs 5 and 6 of this Article.

(8) If, for whatever reason, the tender documents and the supporting documents or additional information, although requested in good time, are not supplied, or made available within the time limits, or where the tenders can be drawn up only after a visit to the construction site or after on-the-spot inspection of the documents supporting the tender documents, the time limits for the receipt of tenders shall be extended so that all interested legal and natural persons may be aware of all the information needed to draw up their tender.

(9) Enterprise groups formed with the purpose of obtaining the concession or affiliate companies shall not be considered third parties within the meaning of this Article.

(10) An affiliate company is any enterprise whose annual financial statements are consolidated with the financial statements of the contracting authority in accordance with the provisions of the act governing companies, or any other operator not subject to the act governing companies, but which the contracting authority controls, directly or indirectly, or which may control the contracting authority, or which is, together with the contracting authority, subject to control by a third enterprise on the basis of ownership, financial shareholding or rules by which it abides.

VI - TERMINATION OF THE CONCESSION

Methods of termination of concessions

Article 34

The concession shall terminate:

- by fulfilment of legal conditions,
- by termination of the concession contract due to public interest,
- by termination of the concession contract by consent,
- by unilateral termination of the concession contract,
- upon the finality of the court decision whereby the concession contract is annulled or cancelled.

Termination of concessions by fulfilment of legal conditions

Article 35

The concession shall terminate:

- (a) upon the expiry of the period it was awarded for,
- (b) upon death of the concessionaire or termination of the legal person which was awarded the concession.

Termination of the concession contract due to public interest

Article 36

(1) The concession contract shall contain a provision on the concession grantor's right to unilaterally terminate the concession contract partially or in full, if it is decided by the Croatian Parliament that such termination is in public interest.

(2) If the concession contract has been partially terminated, the concessionaire may, within 30 days from the receipt of termination declaration terminate the concession contract in full.

(3) In the case of termination of a concession contract pursuant to this Article, the concessionaire shall be entitled to compensation of damages in accordance with the provisions of the concession contract and the general provisions of the law of obligations..

Unilateral termination of the concession contract

Article 37

(1) The concession grantor may terminate the concession contract unilaterally in the following cases:

1. if the concessionaire fails to settle the concession fee for more than two consecutive times or pays the concession fee irregularly in general,
2. if the concessionaire fails to carry out public works or fails to provide public services in accordance with the quality standards set for such works or services, as stipulated in the concession contract,
3. if the concessionaire fails to take the measures and actions necessary for the protection of the general or public good and the protection of nature and cultural good,
4. if the concessionaire provided incorrect data deciding for the appraisal of its suitability in the selection of the most advantageous tenderer for the award of concession,
5. if the concessionaire fails to commence the performance of the concession contract within the agreed term for reasons attributable to the concessionaire,
6. if the concessionaire performs other actions or fails to perform due actions which are contrary to the concession contract,
7. if the concessionaire transferred its rights under the concession contract to a third party without prior consent from the concession grantor, and
8. in other cases in accordance with the provisions of the concession contract and the general provisions of the law of obligations.

(2) The criteria on the basis of which the concession grantor shall determine the existence of grounds for termination of contract referred to in paragraph 1, items 2, 3, 4, 5, 6 and 7 of this Article shall be laid down in the concession contract.

(3) Prior to unilateral termination of the concession contract, the concession grantor shall notify the concessionaire of this intention in writing and set an appropriate time limit for concessionaire to eliminate the grounds for termination of the contract and to explain the reasons which have led to those grounds.

(4) If the concessionaire fails to eliminate the grounds for termination of the concession contract referred to in paragraph 3 of this Article, the concession grantor shall terminate the concession contract.

(5) In the case of unilateral termination of the contract by the concession grantor, the concession grantor shall be entitled to compensation of damages caused by the concessionaire in accordance with the general provisions of the law of obligations. Revenue from the compensation of damages caused by the actions of the concessionaire referred to in paragraph 1 of this Article shall be the revenue of the state budget.

(6) The concessionaire may terminate the concession contract in accordance with the general provisions of the law of obligations.

VII - LEGAL PROTECTION

Article 38

(1) Legal protection in the concession award procedure shall be instituted in accordance with the regulations governing public procurement.

(2) Control through prevention and instruction activities in the concession award procedure shall be implemented in accordance with the corresponding regulations governing public procurement.

Arbitration

Article 39

(1) The parties may agree on arbitration to settle the disputes between them arising from the concession contract.

(2) The applicable law in the procedure referred to in paragraph 1 of this Article shall be the law of the Republic of Croatia.

(3) If the parties have not arranged to settle disputes by arbitration, the competent body shall be the commercial court in accordance with the seat of the concession grantor.

VIII - CONCESSIONS POLICY

Article 40

(1) The concessions policy for the purpose of this Act shall represent all measures and activities aimed at establishing and maintaining an efficient system for the award of concessions, and the arrangement and keeping of the Concessions Register.

(2) Within the framework of the concessions policy, the ministry competent for finance may independently, without a request by the concession grantor, initiate the control procedure through inspection services and/or competent tax services, in respect of a concessionaire which fails to carry out the obligations under the concession contract, and within the scope of the ministry competent for finance.

(3) The concession grantor or the body competent for implementation or control of the enforcement of the act governing a specific concession shall comply with and act upon the requests of the ministry competent for finance and it shall participate in the implementation of all types of control referred to in paragraph 2 of this Article.

(4) In the case of non-compliance with the measures and recommendations of the ministry competent for finance or in the case of failure to cooperate, the ministry competent for finance may request administrative and inspection control in accordance with the scope and provisions of the regulations governing the tasks of the body competent for state administration.

(5) In addition to the measures referred to in paragraphs 1 through 4 of this Article, the ministry competent for finance shall implement other activities related to the cooperation with the concession grantors with the purpose of prevention and coordination of all activities in the field of concessions for the duration of the concession contract.

Article 41

(1) In accordance with this Act, the concession grantor shall continuously monitor the work of the concessionaire and the carrying out of obligations under the concessions contract and shall regularly monitor the execution of all payments in accordance with the concession contract.

(2) For the purpose of monitoring, the concession grantor shall at least once a year request that the concessionaire provides special periodical reports on its work and use of concession, in accordance with the obligations under the concession contract.

(3) The concession grantor shall notify the ministry competent for finance on the received periodical reports in accordance with provisions of paragraph 2 of this Article.

(4) The concessionaire may grant a pledge or other insurances on property which is the object of the concession contract in favour of a credit institution or another legal person, with the prior consent from the concession grantor.

(5) The rights referred to in paragraph 4 of this Article may not be transferred or granted to third parties without obtaining explicit consent from the concession grantor.

(6) The concession grantor shall notify the ministry competent for finance on all liens granted on the basis of the request referred to in paragraph 4 of this Article within 30 days from the date the lien is granted.

(7) The concession grantor shall maintain special documentation related to the activities of the concessionaires for the duration of the concession contract, including records on all affiliated companies of the concessionaire awarded the concession concerned.

(8) The concession grantor shall keep the documentation related to a certain concession until the expiration of the concession concerned. After the expiration of the concession, the concession documents shall be kept in accordance with the special regulations governing the keeping of archive documents.

(9) The concession grantor shall provide all required information on the existing concession within 10 days from the date of receipt of the request by the ministry competent for finance.

(10) The concession grantor shall notify the competent state attorney's office of any breach of contractual provisions in accordance with the scope of work and the provisions of regulations governing the activities of state attorney's offices.

(11) In the case referred to in paragraph 10 of this Article, the concession grantor shall deliver a report on the measures taken to the ministry competent for finance within 15 days from the date of receipt of the request.

(12) In case of outstanding debts arising from the obligations under the concession contract, the concession grantor shall undertake all measures of control and forced payment and legal actions in accordance with the provisions of the concession contract, other authorities of the concession grantor and the provisions of this Act.

Article 42

(1) In accordance with the concessions policy and the responsibilities of the ministry competent for finance, the concession grantor shall notify the ministry competent for finance of any irregularities and measures undertaken in written form and in due time, not later than 30 days from the date the irregularity was noted or the measure undertaken.

(2) If the concessionaire is requested by the concession grantor or the ministry competent for finance to verify the fulfilment of obligations under the concession contract or to provide other important information on the compliance with the concession contract, it shall act upon such a request within 10 days from the date of its receipt.

(3) In case the request referred to in paragraph 2 of this Article is not fulfilled, the concession grantor shall undertake all legal actions in accordance with the provisions of the concession contract and other authorities of the concession grantor.

(4) In procedures where the fulfilment of obligations under the concession contract is not possible, the concession grantor shall notify the competent state attorney's office and other control and inspection services thereof, and shall undertake all necessary measures to rectify the irregularities noted.

(5) The concession grantor shall notify the ministry competent for finance on the undertaken measures referred to in paragraph 4 of this Article within 10 days from the date the measures were undertaken, and shall regularly report on all procedures which were initiated during the implementation of the aforementioned measures.

Plan for the award of concessions

Article 43

(1) The concession grantors shall submit annual and mid-term (three-year) plans for the award of concessions as provided by this Act to the ministry competent for finance.

(2) Before the end of the current calendar year, the concession grantor shall draft an annual plan for the award of concessions falling under its competence for the following calendar year.

(3) The annual plan for the award of concessions shall be in line with the mid-term (three-year) plan for the award of concessions.

(4) In the case of discrepancy between the annual plan and the mid-term (three-year) plan for the award of concessions, the concession grantor shall deliver to the ministry competent for finance an explanation concerning the discrepancy when it submits the data on the annual plan for the award of concessions.

(5) The annual plan for the award of concessions shall contain:

- a) the planned number of concessions;
- b) the type of each concession;
- c) periods for which certain concessions are planned to be granted;
- d) the legal basis for the award of concessions;
- e) estimated annual fee for respective concessions.

(6) The concession grantor shall deliver the annual plan for the award of concessions referred to in paragraph 1 of this Article to the ministry competent for finance by the end of the third quarter of the current year.

(7) The ministry competent for finance may, where appropriate, require the concession grantor to submit additional data in the period of ninety days from the day of receipt of the data referred to in paragraph 5 of this Article.

(8) Apart from the annual plan referred to in paragraphs 2 through 7 of this Article, the concession grantor shall, upon a request by the ministry competent for finance, submit a mid-term (three-year) plan for the award of concessions with clearly stated economic effects of the implementation of the future concession contracts, in compliance with the relevant regulations governing public finance and the preparation, evaluation and implementation of investment projects.

(9) In the mid-term (three-year) plan for the award of concessions, commercial and other areas where concessions are planned to be granted shall be quoted, public objects to be built and public activities which shall be carried out pursuant to the concessions, the planned expenditure for concessions and income from the concessions, and the assessment of the expected economic benefit from the planned concessions.

(10) The mid-term (three-year) plan may contain other elements which are significant for the implementation of an effective concessions policy.

(11) In the procedure for submitting the data referred to in paragraphs 8 and 9 of this Article, the concession grantor must in a transparent manner demonstrate the compliance of the plan for the award of concessions with the economic development framework and individual projects, in accordance with the public interest, according to the provisions of this Act.

(12) In addition to the information referred to in paragraphs 1 through 11 of this Article, the concession grantor shall deliver other information concerning the existing concessions and their date of expiry in the current calendar year or the following period upon request by the ministry competent for finance.

Concessions Register

Article 44

(1) The Concessions Register is an integrated electronic record of all concessions granted on the territory of the Republic of Croatia.

(2) The ministry competent for finance shall keep the Concessions Register.

(3) The Concessions Register guarantees the availability of data to the public.

(4) Public data, in accordance with paragraph 3 of this Article shall be:

- name of the concession grantor,
- identification number of the concession grantor,
- name of the concessionaire,
- commencement date of concession activities,

- expiration of concession activities,
- title (type) of the concession,
- location of concession activities,
- valid coefficient for calculating the concession fee.

(5) The keeping of the Concession Register means the collecting and recording of the data from the concession documents, the storing of data and database management, providing access to the data, and protecting the database and the documents stored in the archive.

(6) The ordinance on setting up and keeping the Concessions Register shall be issued by the minister of finance.

(7) The concession grantor and the concessionaire shall act in compliance with the requirements of the ministry competent for finance, complying with the deadlines stipulated in the provisions of the ordinance on setting up and keeping the Concessions Register.

Article 45

The concession grantor shall deliver the concession contract to the ministry competent for finance within 10 days from the day of its signing.

IX - TRANSITIONAL AND FINAL PROVISIONS

Article 46

The procedures for the award of concessions launched before the entry into force of this Act, and court or other procedures conducted in relation to these shall be concluded pursuant to the provisions of regulations which were in force by the day this Act entered into force.

Article 47

(1) The concession grantor shall initiate the procedure for the entry into the land register of all concession contracts relating to immovable property which have not been entered in the land register, within the period of one year from the entry into force of this Act.

(2) The concession grantor shall notify the ministry competent for finance of the procedure for entry in the land register referred to in paragraph 1 of this Act, and within the period of 10 days from the beginning of the procedure for the purpose of recording the data in the Concessions Register.

Article 48

(1) On the day of the entry into force of this Act, the Concessions Act (OG 89/92) shall cease to have effect.

(2) The minister of finance will issue the ordinance referred to in Article 44, paragraph 6 of this Act within 30 days from the date of entry into force of this Act.

(6) The Ordinance on setting up and keeping the Concessions Register (OG 164/04) shall remain in force until the entry into force of the ordinance referred to in paragraph 2 of this Article.

Article 49

This Act shall be published in the Official Gazette and shall enter into force on 1 January 2009, save for the provisions of Article 5, paragraph 2, which shall enter into force on the date of the accession of the Republic of Croatia to the European Union.

Class: 018-05/08-01/05

Zagreb, 17 October 2008

THE CROATIAN PARLIAMENT
President of
the Croatian Parliament
Luka Bebić, m. p.