



AGJENCIA KOSOVARE E PRIVATIZIMIT  
KOSOVSKA AGENCIJA ZA PRIVATIZACIJU  
PRIVATISATION AGENCY OF KOSOVO

## **GENERIC RULES OF TENDER**

25 September 2017

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Privatisation Agency of Kosovo, in order to comply with its legal mandate for privatization and liquidation of Socially Owned Enterprises, set out in article 1 and 2 of the Agency Law, and based on article 6.4 of Operational Policies of the Agency, hereby approves:

## **GENERIC RULES OF TENDER**

### **Introduction**

These rules of tender set out the procedures for privatisation of “subsidiaries” and for the sale of “tendered items” through liquidation, as defined by these rules of tender, including conditions and criteria for submitting a bid by bidders, conditions and criteria for classification and selection of bids by the Agency and conditions and criteria for signing sale contracts with provisional winning bidders

### **Article 1 Definitions**

Unless the context requires otherwise, the following definitions shall apply for the purposes of the present rules of tender:

**“Agency”** means the Privatisation Agency of Kosovo (hereinafter referred to as the “Agency”), which was established according to the Law No. 03/L-067 on the Privatization Agency of Kosovo, dated 21 May 2008, amended and supplemented by the Law 04/L-034 on Privatisation Agency of Kosovo, amended by the Law no. 04/L-115 and the Law no. 05/L-080. The Agency is legal successor of the Kosovo Trust Agency, as regards socially-owned enterprises, which was established in accordance to UNMIK Regulation 2002/12 on Kosovo Trust Agency.

**“Agent”** means anyone acting as agent or acting directly or indirectly on behalf of, or under the instructions of another person, regardless if such actions are carried out in a disclosed or undisclosed manner.

**“Tendered items”** means moveable and/or immovable assets of the SOE, details of which are set out in the Information Memorandum that are to be tendered for sale in accordance with the rules of tender.

**“Board”** means the Board of Directors of the Agency.

**“Bid Price”** means the amount stated in Euro (€) by an eligible bidder for privatisation of the shares of the Subsidiaries and the Tendered Items.

**“Date of receiving the notice”** means the date of undertaken actions by appointed personnel of the Agency, with the purpose to notify/contact the party through the letter, telephone, fax or cablegram/mail.

**“Bid deposit”** means the amount of funds determined by the Agency, on individual basis for every tendered unit or asset, deposited by the eligible bidders, in accordance with article 7.2 of the Rules of Tender.

**“Current Liabilities”** means certain debts and liabilities of the SOE, which have arisen during the normal course of the SOE’s business, an illustrative list of which is set out in the Information Memorandum and their information is included in the Data Room, and which shall include the following:

- (1) The net VAT liabilities of the SOE, exclusive of interest and penalties, arising during the 12 month period before the date of entry into force of the contract;
- (2) SOE’s outstanding liabilities for property tax, in respect of immovable property that comprises tendered items, shown during the period of 12 months before entry into force of the contract;
- (3) SOE’s outstanding liabilities in respect of goods and services (e.g. KEK and other utility debts or debts to suppliers, but not including salaries, pensions or other payments to or on behalf of employees of the SOE in their capacity as employees), arising in the normal course of business during the 3 month before the date of entry into force of the contract.
- (4) The cost of the supplies of goods and services (but not including salaries, pensions or other payments to or on behalf of employees of the SOE in their capacity as employees) accruing during the normal course of business that:
  - a) Accrued during the three month period ending on the date of entry into force of the relevant declaration of transfer;
  - b) Which remain unpaid on such date and are attributable to the business of the SOE.
- (5) Any other liabilities to be transferred from the SOE to the Subsidiary, which are identified in the Information Memorandum (or any update thereto) or in the Data Room.

**“Business Day”** means days on which public institutions of the Republic of Kosovo are open for business, excluding Saturdays, Sundays and public holidays as set out by the law in force.

**“Tender Documents”** means: (1) Tender Notice; (2) Information Memorandum (as described below in this article); (3) Rules of Tender; and (4) Confidentiality agreement to be signed by bidders and the Agency, described in article 6.3 of the Rules of Tender.

**“Electronic File”** means the electronic file established by the Agency wherein some information and documents are made available regarding the SOE, subsidiaries, and tendered items to be inspected by the bidders.

**“Special Chamber”** means the Special Chamber of the Supreme Court of Kosovo established in accordance with UNMIK Regulation No. 2002/13, dated 13 June 2002, “on the Establishment of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters”, replaced by the Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters.

**“Director”** means a member of the Board of Directors of the Agency

**“Director of the Executive Secretariat”** means the Director of the Executive Secretariat of the Agency.

**“Bid Submission Form”** means the document, in the form set out in Annex C, to be submitted by each Eligible Bidder in accordance with article 8.6, (a)(i).

**“Committees”** means the committees established in accordance with this regulation. Members of the committees shall be appointed by Managing Director. Tasks of these committees shall be determined by appointment decision.

**“Bid Opening Committee”** means the committee established by the Board, whose authorization is set out in article 9 of the Rules of Tender.

**“Bid Admission Committee”** means the committee established by the Board, whose authorizations are set out by article 8.5, 8.8 and 8.9 of the Rules of Tender.

**“Evaluation committee”** is the committee appointed by the Board to review the documents submitted by bidders with highest bid price, whose authorizations are set out in article 10 of the Rules of Tender.

**“Bid registration Committee”** means the Committee established by the Board, who puts the bids in tabular form in the Bid Day or the Bid Opening Ceremony, in accordance with Article 9.4 of the Rules of Tender.

**“Bid verification Committee”** means the Committee established by the Board in accordance with article 8.10 of the Rules of tender.

**“Sales Contract”** means the contract entered into between provisional winning bidder and the Agency (where the Agency acts on behalf of the SOE) according to which the subsidiary or tendered items shall be sold to the provisional winning bidder in consideration for the payment to the Agency of the highest bid price.

**“Bidders Register”** means the register of bidders, which is compiled and maintained by the Agency,

**“Applicable Law”** means the laws and sub legal acts adopted in compliance with the Constitution and the legislation that was in power on the date of entry into force of the Constitution, as long as it is in compliance with the Constitution, until it is not invalidated, replaced or amended, in compliance with the Constitution.

**“Information Memorandum”** means the document prepared by the Agency which contains different information on the SOE, subsidiary, and tendered items, details of which are set out in article 6.4 of the Rules of Tender;

**“Management”** means the Managing Director and two Deputy Managing Directors of the Agency, both collectively and individually.

**“Enterprise”** means an enterprise as defined in article 5 of the Law on the Agency, over which the Agency exercises its administrative authority.

**“Socially-owned Enterprise”** means a legal entity (other than a publicly-owned Enterprise) that: a) on or after 1 January 1989, (i) fell within paragraph 1 or 2 of Article 2 of the Law on Enterprises, or (ii) fell within paragraph 3 of Article 2 of the Law on Enterprises and a majority of whose assets were in social ownership or a majority of whose capital was social capital; and b) was registered or was required to have been registered in Kosovo under the then applicable law.

**“Tender Notice”** means the notice issued by the Agency, announcing the Tender, which provides specific details of the Tender

**“Payment Notice”** means the Agency’s notice addressed to provisional winning bidder with regard to payment of the offered price.

**“SOE”** means socially-owned enterprise.

**“Bid”** means expression of one person or entity’s will, which is presented before the Agency by means of a designated form (bid submission form, as set out in article 8.6, item a, sub item (i) of the Rules of Tender), and accompanied by evidences as set out in article 8.6 of the Rules of Tender (including but not limited to bid price) which is submitted in accordance to article 8 of Rules of Tender, whose purpose is to participate in the bid to buy the subsidiary or the tendered items.

**“Highest Bid Price”** means the bid offering the highest price for the purchase of the subsidiary or tendered items.

**“Bidder”** means any Eligible Bidder or Provisional Winning Bidder, excluding a Prohibited Bidder.

**“Provisional Winning Bidder”** means any of the highest bidders, the second highest bidder, the third highest bidder notified by the Agency in writing of being declared the Provisional Winning Bidder

**“Highest Bidder”** means the Eligible Bidder who during the tendering process of the subsidiary or tendered items, submits the Highest Bid Price.

**“Second Highest Bidder”** means the Eligible Bidder who is ranked as the second bidder in the tendering process by the bid price to purchase the subsidiary or the tendered items.

**“Third Highest Bidder”** means the Eligible Bidder who is ranked as the third bidder in the tendering process by the bid price to purchase the subsidiary or the tendered items.

**“Potential Bidder”** means any natural or legal person, business organization or corporation competing before the Agency to be registered as an Eligible Bidder, in accordance with the Rules of Tender.

**“Prohibited Bidder”** means any natural or legal person, business organization or corporation, as set out in article 4.1 of the Rules of Tender that is disqualified from bidding in accordance with article 10 of the Rules of Tender and is accordingly prohibited from signing the sales contract.

**“Payment”** means the amount equal to the total of highest bid price **MINUS** the bid deposit.

**“Tender Schedule”** means the document stipulating important time periods and dates in respect of the tender process (which is attached to the Rules of Tender as Annex A).

**“Asset”** means an asset, interests or property, as defined in article 5 of the Law on the Agency, over which the Agency exercises its administrative authority.

**“Bid Submission Period”** means the date and time interval, determined by the Agency, which usually is from 10:00 until 12:00, Kosovo time, during which Bids must be submitted in the Agency and/or at the location designated by the Agency, details of which are also set out in the Tender Notice.

**“Person”** means a natural person, legal person, business organization or corporation even if according to the law it does not have legal authority.

**“Agency’s Personnel”** means professional and technical staff of the Agency as provided in Agency’s Law.

**“Control Person”** means any legal or natural person on whose orders, instructions and control a legal person or entity is accustomed to act regardless if the control person is in the position of the managing director, chief executive officer, a chairman of the board of directors, a major shareholder or any other position whereby it can exercise control over the enterprise and staff.

**“Representative”** means any person legally authorised to act on behalf of a bidder throughout the tender, including signing of the Share Sale Agreement and any documents related thereto.

**“Rules of Tender”** means these Generic Rules of Tender.

**“Regulation on Transformation of Immovable Property”** means UNMIK Regulation No.2003/13, dated 9 May 2003, “on the Transformation of the Rights of Use to socially owned Immovable Property”.

**“Executive Secretariat”** means the executive secretariat of the Board as established by the Law on the Privatization Agency of Kosovo.

**“Subsidiary”** means the limited liability company to be established by the Agency in accordance with article 8 of the Law on the Agency (where the Agency acts on behalf of the SOE) that will receive the tendered items and which will be tendered for privatisation.

**“Bid Submission Fee”** means the non-refundable bid submission fee in the amount of € 300 (three hundred euro), unless cases determined by this regulation, paid by an Eligible Bidder to the Agency in accordance with article 8.1 of Rules of Tender.

**“Control table”** means officials of the Agency designated to carry out evidencing of tender documents submitted on the day of sales.

**“Tender”** means the entire process whereby the Agency arranges the privatization of the subsidiary or puts tendered item on sale, including classification and identification of the Highest Bid Price and the completion of the sale of subsidiary or tendered item, to the provisional winning bidder.

**“Transformation”** means, any of the following with respect to a legal person: a merger, transformation, (re-) registration, incorporation as a joint stock or limited liability company or partnership or other legal person, bankruptcy, liquidation, insolvency, organization into a distinct form or other entity or any other event or process by which any of the following is altered with respect to that entity: its legal identity, form or nature, or the form or nature of its ownership or capital, or its seat, and where any such event or process or any part thereof took place at any time between 22 March 1989 and 13 June 2002.

**“Background Checks”** means verification of information/documentation carried by the Agency, aiming to confirm that the Bidder offering the highest price is not a Prohibited Bidder in accordance with article 10 of the Rules of Tender.

**“Designated Account”** means the bank account that is designated by the Agency for the purpose of receiving the Purchase Price from the Provisional Winning Bidder, details of which will be provided to the Provisional Winning Bidder.

## **Article 2**

### **Legal Validity and Interpretation of the Rules Of Tender**

- 2.1.** The Rules of Tender are binding for the Agency and for any other person who participates or is included in the privatization and liquidation procedures, according to the Rules of Tender. For a bid to be considered, it should be in accordance with the Rules of Tender. Upon participation at any stage of the tender or upon submitting a bid, the bidder agrees and undertakes measures to undergo conditions and procedure set out by the Rules of Tender.
- 2.2.** The Rules of Tender are interpreted reflecting the Agency Law and applicable Operational Policies. In case a provision of the Rules of Tender is in contradiction to the Agency Law or Operational Policies, then the Agency Law prevails, respectively the Operational Policies.
- 2.3** Any reference to the masculine gender includes reference to the feminine gender and any reference to the neuter gender includes the masculine and feminine genders.
- 2.4.** Any reference to the singular includes reference to the plural, and vice versa, except if from the context it may not be interpreted so.
- 2.5.** Headings are inserted for convenience only and do not affect the structure or interpretation of these Rules of Tender.



## **Article 3**

### **General Aspects of Liquidation Process**

#### **3.1. General overview of Agency's role**

Privatisation Agency of Kosovo ("The Agency") is an independent public institution of the Republic of Kosovo exercising its functions and responsibilities with full autonomy in compliance to the Law on Agency, Operational Policies of the Agency, these Rules of Tender and other applicable legal and sub normative acts in the Republic of Kosovo. The Agency has the mandate to administer Enterprises and assets as stipulated by the Law on Agency including the right to sell, transform and/or their liquidation. The Agency enjoys full juridical personality and may sue or be sued in a court procedure any other similar procedure.

#### **3.2. Sale structure and bid statement**

The Agency shall establish the subsidiary on behalf of the SOE and shall keep it in trust for the SOE, subsidiary's issued share capital. As an integral part of the tender, the Agency shall perform the sale of subsidiary' issued share capital, on behalf of the SOE whilst tenderd items shall be transferred to the subsidiary for a definite time.

The Subsidiary or tendered item shall be tendered for sale through public auction in compliance to procedures set out in Rules of Tender. There shall be one bidding round and these rules stipulate procedures that govern the tender, information and documents to be included in the bid, highest bid identification and method to proceed with the sale of subsidiary or tendered item to the potential winning bidder.

In order to consider a bid, the bidder must be in accordance to Rules of Tender. Bidders' participation at any moment of the tender or through submitting the bid, the bidder complies and undertakes in compliance with these rules of tender.

Upon submitting a bid, the bidder must emphasize what subsidiary or tendered item he is competing and must submit the bid price.

#### **3.3. Sale is performed in accordance with the highest bid price**

The Agency shall sell the subsidiary or tendered items only with highest bid price. Highest bidder shall have the right to buy the subsidiary or tendered items only by highest bid price. If for any reason the sale does not proceed with the highest bidder, the second highest bidder by complying to these rules of tender shall have the opportunity, but is not obliged to purchase the subsidiary or tendered items with highest bid price. If for any reason the sale does not proceed with the second highest bidder, the third highest bidder by complying to these rules of tender shall have the opportunity, but is not obliged to purchase the subsidiary or tendered items with highest bid price.

#### **3.4. Tender schedule**

The Agency shall designate the tender schedule (which is attached to the Rules of Tender, Annex A). Bidders must consult the tender schedule and obtain information regarding terms and dates set by it and comply with them during the tender process.

## **Article 4**

### **Prohibited bidder**

#### **4.1. For the purposes of this tender, the following bidders shall be prohibited from bidding:**

- (a) Public or socially-owned enterprises.
- (b) Government and governmental institutions of Republic of Kosovo, independent public agencies and public independent institutions;
- (c) Government, governmental institutions, agencies and other public institutions of any country;
- (ç) Natural and legal persons or business enterprises and control persons or heads of legal persons or business enterprises who are sentenced for committing criminal offense with imprisonment of over one year duration for criminal offences against economy, constitutional order, charges related to organized crimes and all other charges involving fraud elements set out in the Criminal Code. Parties who have been sentenced are not considered as prohibited bidders.
- (d) Natural or legal persons that have occupied socially-owned immovability against whom the Agency or SOE has initiated court proceedings for releasing of property and/or compensation of eventual damages, with the exception of the parties who have signed lease contract with the Agency or the parties who do not have lease contract, but these parties have paid the compensation of all obligations for the use of SOEs property;
- (e) Natural or legal persons that: (i) did not respect terms of contract with the Agency or any enterprise administered by the Agency (existence and nature of that disregard shall be determined by the Agency in its sole discretion , (ii) have outstanding debt or penalty towards the Agency or any enterprise administered by the Agency, , (iii ) natural or legal persons who did not settle the penalty determined by the Agency or that are subject to any claim or dispute (regardless whether such matter is submitted before the court or elsewhere); Exception are the parties which pay their debt to the Agency or SOEs before the signing of sale contract, they are not considered as prohibited bidders;
- (f) Natural or legal persons which based on reasonable Agency's opinion:
  - (i) are included in any collusion or any other illegal or irregular activity and subsequently the Agency has cancelled any privatization or liquidation tender;

- (ii) in any other way have violated tender regulations for any privatization or liquidation tender organized by the Agency; or
- (iii) have withdrawn from their position of provisional winning bidder in a privatization or liquidation tender more than (5) five times, by failing to deposit the price of their winning bid within deadline requested by the Agency or through their refusal to sign sale documents, during any privatization tender organized by the Agency, after privatization "Wave 7" or during any liquidation tender organized by the Agency;
- (g) Legal subjects, where the beneficiary owners or their controlling persons belong to stated categories in article 4.1 from item (a) to (f) above;
- (h) Legal subjects whereby owners, beneficial persons or their controlling persons have been or are owners, beneficiaries or controlling persons to any other legal subject, which belongs to any of the categories stipulated in article 4.1, item (a) to (f).

4.2. Any bid submitted by a prohibited bidder shall be disqualified regardless of the fact such bid is in full compliance to terms and conditions set out in Rules of Tender.

## **Article 5**

### **Due diligence**

- 5.1. Every potential bidder is responsible to carry out due diligence in regard to SOE, subsidiary, or tendered items in order to obtain necessary information.
- 5.2. Agency shall establish electronic files about the SOE, subsidiary, or tendered items. The Agency shall grant potential bidders access to information and documents in the electronic file. Electronic file can be obtained through the request with electronic mail in the address [sales@pak-ks.org](mailto:sales@pak-ks.org) or in PAK Headquarter.
- 5.3. The Agency shall solely be responsible to coordinate bidder's access to the electronic files. Potential bidders may gain access to the electronic files only during days and times specified in the tender schedule.
- 5.4. Acting pursuant to requirements of potential bidders, the Agency shall make reasonable endeavors, within boundaries of its administrative resources that prior to submitting bids, enable them to visit the location of the SOE and tendered items.
- 5.5. The Agency shall solely be responsible to coordinate visits of potential bidders to the site and spaces of the SOE and tendered items. Potential bidders may visit the location and spaces of the SOE, subsidiary, or tendered items only during days and times specifies in the tender schedule. If any person acts or

- conducts in a manner that would doubt his sincerity as stakeholder, the Agency may deny him the access to the location and spaces of the SOE, subsidiary, or tendered items.
- 5.6. Potential bidders shall not contact the SOE directly. Presenting issues and setting meetings shall be done only through the Agency.
- 5.7. Upon submitting the bid, potential bidder must confirm and affirm before the Agency in written, the opportunity and conditions were made possible by the Agency to perform due diligence and independent appraisal regarding SOE, subsidiary, or tendered items and all the information and documents located in the electronic files.
- 5.8. Failure to perform due diligence and independent appraisal regarding SOE, subsidiary, tendered items as well as regarding any and all the information and documents located in the electronic file, does not release the potential bidder of his obligations bestowed upon him by the sale contract and other respective documents. The Agency or SOE shall not assume responsibility for the appraisal and conclusions made by any bidder after independent due diligence, after his appraisal of the SOE, subsidiary, or tendered items and after due diligence and assessment of the information and documentation presented in electronic files.
- 5.9. Any bid depending on further due diligence, other investigation or on another bidder's bid shall be deemed incomplete and unacceptable to the Agency.
- 5.10. As a result of circumstances in Kosovo is well-known and confirmed by all respective parties that a part of information and documentation regarding the SOE, subsidiary, or tendered items may have been lost, destroyed or misplaced by the location and spaces of the SOE and may be considered unavailable. For this reason, potential bidders are reminded that any information document analysis may be incomplete and must be accompanied by a thorough assessment of the SOE, subsidiary, or tendered items. The Agency or the SOE do not assume responsibility or obligation regarding any deficiency in the information and documents available in connection to the SOE, subsidiary, or tendered items.
- 5.11. The Agency is not required to translate any of the information or document related to the SOE, the subsidiary and tendered items. Potential bidder is responsible for every interpretation or translation of information or documents during due diligence. Persons providing interpretation and translation services to potential bidders must comply with the obligation for maintaining business confidentiality stipulated by these rules of tender and the Agency requires those persons to sign the confidentiality agreement.
- 5.12. Potential bidders must sign the confidentiality agreement included in the tender documents and return it to the Agency prior to allowing access to the bidder to information and documentation in the electronic file or visit the location and spaces of the SOE, subsidiary, or tendered items in order to perform due diligence. Likewise, potential bidders are required to comply with electronic file access regulation prior to having been allowed access.

## Article 6

### Obtaining tender documents

- 6.1. Potential bidders are allowed to obtain copies of tender documents.
- 6.2. Tender notice instructs potential bidders to contact certain office within the Agency to obtain respective tender documents.
- 6.3. Tender documents include: tender notice, Rules of Tender, Information Memorandum; confidentiality agreement signed by potential bidder and the Agency and other documents the Agency deems as necessary.
- 6.4. Information Memorandum is a document prepared by the Agency containing different information related to the SOE including: a brief background of the SOE; business activity summary; key assets; a background of tendered items, and other information deemed significant by the Agency's personnel.
- 6.5. Information Memorandum has an informative nature and as such is not an offer.
- 6.6. The Agency shall endeavour to secure tender documents for potential bidders within a reasonable time from admission of the request for tender documents. When tender documents are delivered to potential bidders via electronic mail or regular mail, those are free of charge. Potential bidders wishing to obtain tender documents in any other method shall bear the delivery costs of such other method.

## Article 7

### Bid submission fee and bid deposit

- 7.1. In order to compensate administrative and communication expenses related to reviewing and processing bids by the Agency, each eligible bidder must pay the bid submission fee in the amount of 300 € (three hundred euro). Eligible bidder along with his bid must submit evidence of payment. Bid submission fee is paid via bank transfer in the bank account designated by the Agency for that purpose.
- 7.2. In order to ensure the good will of bidders, each eligible bidder must pay the bid deposit, the amount of which is assigned by the Management of the Agency, on individual basis for each subsidiary or tendered item. Bid deposit is paid via bank transfer in the bank account designated by the Agency for that purpose. Eligible bidder along with his bid must submit evidence of payment to the Agency. The Agency credits the bid deposit paid by the provisional winning bidder from the total amount of highest bid paid to the Agency for conclusion of purchase of the subsidiary or tendered items.

- 7.3. The Agency shall endeavour to return the bid deposit to non-winning bidders within 10 (ten) business days after completion of bid submission period.
- 7.4. In case the Agency has confiscated the bid deposit from eligible bidder due to reasons set out in Rules of Tender, such deposit shall not be returned to the eligible bidder.

## **Article 8**

### **Content and bid submission**

- 8.1. There shall be only one bidding round during the tender, unless otherwise decided by the Board.
- 8.2. Every eligible bidder has the right to submit a bid. A person submitting a bid should not identify the eligible bidder on whose behalf he is submitting the bid.
- 8.3. Bids must be submitted in one of the official languages in Kosovo (Albanian or Serbian) or in English.
- 8.4. All bids must be submitted in offices of Agency in Prishtina and/or in a location designated by the Agency through tender notice. Bids must be submitted physically at the Agency's committee for bid admission.
- 8.5. Bids must be submitted to the bid admission committee during the bid submission period. Bid admission committee shall not accept bids after the bid submission period is over or bids submitted at some other location than the one stipulated in article 8.4 of the Rules of Tender.
- 8.6. The bid must contain the following documents and evidence attached:
- (a) Following information and documents must be in a sealed envelope with "Additional bid information" imprinted on the exterior side of the envelope:
- (i) original of the bid submission form/Annex C (attached to these Rules of Tender), completed and signed by or on behalf of the eligible bidder;
  - (ii) the below information with regards to possible bidder:
    - in case the bidder is a natural person an ID or passport copy must be submitted;
    - if a bidder is more than a natural person, a copy of notarized document must be submitted which proves the organization of natural persons to participate in tender as bidders, together with ID copies and the identity of natural persons who are participants in this organization;
    - if the bidder is legal subject a copy of certificate of registrations of his business activity must be submitted, together with ID copies and the identity of beneficiary owners and controlling persons. The identity verification of beneficiary owners

and controlling persons is not required from legal subjects which are in the lists of internationally recognized scholarships, having into consideration that such lists are in disposal; and

- in case the bidder is the composed consortium from natural persons, partnerships and companies, the establishment documents of that consortium must be submitted, together with the copies of IDs, passports and the data of business registration of the participants in consortium, including also the data for the identity of beneficiary owners and controlling persons of consortium members;

Submitted documents according to paragraph (a, II) of this Article shall be verified by “controlling tables” if they were submitted in the sales day, whereas after the sales day the evaluation committee shall make the review of these documents before the submission for final approval by board of directors, it shall conclude if the bidder with the highest bid shall be prohibited bidder;

- (iii) proof of transfer of bid submission fee to the account designated to that purpose by the Agency;
- (iv) Proof of transfer of bid deposit to the account designated to that purpose by the Agency.
- (v) Proof of payment for administrative fee and bid deposit can be made through the bank electronic transfer copy and the original or the copy of bank transfer signed by the bank.

(b) bid price must be placed on a separate envelope with “Bid price” imprinted on the exterior part. Annex B to these rules of tender contains a table to calculate total amount of money to be paid to the Agency by the eligible bidder if this bid price of the eligible bidder is deemed highest bid price and the eligible bidder is declared provisional winning bidder. Eligible bidder must complete this table and submit it in a sealed envelope with “Bid Price” imprinted.

(c) Sealed envelopes stipulated in item (a) and item (b) of this article must be placed together in a third sealed envelope with “**Bid for tender no. [ • ]**” imprinted. Exterior part of this envelope must not reveal any information or any other mark that could help identify the eligible bidder. All bids must be submitted in white envelope.

8.7. Bid admission committee, immediately after receiving the bid, shall write the number on the third sealed envelope stipulated in article 8.6, paragraph (c) and the same number shall register in the receipt issued in compliance to article 8.8 of Rules of Tender.

8.8. Bid admission committee shall, immediately after registering the number in the receipt, deliver the receipt to the person submitting the bid with the date, hour and minute of bid admission by the Agency. The receipt must be signed by the bid admission committee.

8.9. The Bidders are obliged to provide all information and documentation requested by the Agency with the purpose of developing a wellbeing privatization process and fulfilling the conditions of the Rules of Tender and compliance with applicable law and international best practice.

- 8.10. During the sales day or bid opening ceremony, Evaluation Committee shall review the bids which have been found to contain irregularities or problems by the inspection desk before the bids are sent to the Bid Opening Committee.

### **Article 9**

#### **Bid opening**

- 9.1. Bids shall be opened by the bid opening committee publicly within three (3) hours after conclusion of bid submission period.
- 9.2. Bid opening committee shall identify and publicly announce all submitted bids to purchase the subsidiary or the tendered items.
- 9.3. Bid registration Committee shall publicly incorporate in tabular form the bids received on the sales day or bid opening ceremony.
- 9.5. The Agency shall sell the subsidiary or tendered items with the highest bid price.

### **Article 10**

#### **Verification procedure**

- 10.1. The Agency at any time by including also the phase of sale contract conclusion of new subsidiary or tendered asset can require from the bidder the submission of additional information or proofs, which it evaluates as relevant with regards to the status of bidder with the highest price.
- 10.2. Evaluation Committee shall review the documents and proofs after the sales day only for the bidders with the highest price.
- 10.3. Evaluation Committee shall receive from all respective officers of the Agency data with regards to the bidders and based on them it shall generate a list where are included all prohibited bidders. This list is compiled and shall be updated by Evaluation Committee.
- (a) Evaluation Committee shall conclude if the bidder with the highest bid falls in the category of prohibited bidders (as it was determined in the Article 4 of Tender Rules) and that it fulfils determined conditions and criteria with these Rules of Tender. If within a sales wave, a bidder has applied for more than one asset and it was announced as the bidder with the highest price for more than one asset, the conclusion as prohibited bidder is valid for all cases.
- (b) Evaluation Committee shall conclude that the bidder with the highest price falls into the category of prohibited bidders (as it is provided in the Article 4 of Tender Rules) and in case when the bidder did not submit respective evidences despite the request by the personnel of the Agency for case completion.



- 10.4. Agency shall make reasonable efforts that staff treats as confidential all provided information by the bidder and that it will not disclose them to third parties, except if: (a) it is required by the applicable law or by any issued order from a court of competent jurisdiction and (b) it is required by the Agencies for the implementation of law in Kosovo and abroad or (c) it is required from any authorized body with law, to investigate the past of the bidder or (d) if the bidder has agreed otherwise in written
- 10.5. Appeal may be submitted against the decision for the conclusion as prohibited bidder at Managing Director of the Agency within the period of five days starting from the day of admission of decision. Established committee by Managing Director for this issue shall recommend to Managing Director within three days regarding the decision for appeal. Decision of Managing Director can be objected in Special Chamber of Supreme Court of Kosovo.

## Article 11

### **Announcement of the provisional winning bidder and Payment of purchase price**

- 11.1 Subject to any other requirements set out in these Rules of Tender, the Subsidiary or tendered asset shall be sold to the highest bidder on the following terms:

Within 3 (three) Business Days of the Bid Submission Period, the Agency shall notify the Highest Bidder that his bid has been ranked as the highest.

The bidder with the highest price (natural persons, representatives or the owners of legal persons, or consortiums) shall submit the certificate from the competent court that he is not convicted person. This certificate shall not be of the date before the bid day and it shall be treated in compliance with Article 4 and Article 10 of tender rules.

- a) Notice on the decision for the announcement of provisional winning bidder or cancelation of sale is announced after the Board approves or rejects the sale and the deposit does not return until this decision is made;
- (b) Based on Board's decision, the Agency shall notify that:
- (i) If the sale is approved, the same is the Provisional Winning Bidder and within 20 business days shall pay the Initial Payment into the Designated Account, or
  - (ii) If the sale is rejected, the bid deposit will be returned to the Highest Bidder in compliance with the Article 7.3 of this Rules of Tender

- 11.2. After the approval of the sale price by Board of Directors, Agency shall invite the bidder to pay the price of the highest bid, in the designated account, according to the following conditions:

- a) 45 (forty five) business days from the date of notification, if the highest bid price is up to € 499,999 (four hundred ninety-nine thousand nine hundred ninety-nine Euros);

- b) 50 (fifty) business days from the day of notification, if the highest bid price is from €500,000 (five-hundred thousand) to € 999,999 (nine hundred ninety- nine thousand nine hundred ninety-nine Euros).
- c) 60 (sixty) business days from the date of notification, if the highest bid price is 1.000.000 €(one million euro) or higher.
- 11.3. The Provisional Winning Bidder shall be forfeited the right to complete the purchase the subsidiary or tendered items as well as the bid deposit by the Agency for failing to complete the purchase in the Designated Account, within the deadline set out in the paragraph 11.2.
- 11.4 Exclusively, eligible bidders shall have their bid deposit returned if ascertained the existence of threat, coercion or any other criminal act against him or his asset, against his family in order to force him to withdraw from the bid, only if an act of accusation is filed and confirmed or a proposal for act of accusation is filed against a person suspected of having been engaged in a criminal act or similar criminal acts.
- 11.5 Means utilized by the provisional winning bidder to pay the highest bid price is not done in cash and must not have the origin of any jurisdiction on the black FATF (Financial Action Task Force) list from other competent bodies.
- 11.6 In the event that the Agency disqualifies the Provisional Winning Bidder (as defined in the Rules of Tender), the Agency shall notify the Second Highest Bidder to complete the purchase of the subsidiary at the Highest Bid Price.
- 11.7 The Second Highest Bidder within three (3) business days shall:
- (a) Notify the Agency in writing that wants to proceed with the purchase of the subsidiary or tendered items at the highest bid price, and
- (b) Transfer the Bid Deposit to a bank account designated for that purpose by the Agency, in case the bid deposit has been refunded to the Second Highest Bidder in accordance with Article 7.3 of the Rules of Tender.
- 11.8 If the Second Highest Bidder does not undertake actions under Article 11.7 (a) and (b) then the Agency reserves the right to consider it as refusal to notification to complete the purchase of the subsidiary.
- 11.9 If the Second Highest Bidder does not want to proceed with the completion of purchase of the subsidiary at the highest bid price, then the Agency shall proceed with the third highest bidder with the offer to purchase the subsidiary or tendered items with the highest bid price.
- 11.10. Rules of Tender that apply to the First Highest Bidder shall also be applied identically for the Second Highest Bidder. The Rules of Tender applied to the first and the second highest Bidder shall be applied identically for the Third Highest Bidder.

- 11.11 Without limiting the generality of section 15.3 and without prejudice to any of other causes of postponement or cancellation of the Tender set out in these Rules of Tender in the event that a sale to the Highest Bidder, the Second Highest Bidder or the Third Highest Bidder of the Subsidiary or Tendered Items is not achievable, in accordance with Rules of Tender, then the Agency shall be entitled to cancel the Tender.

### **Article 12**

#### **Classification of bids with same price**

If there are two or more bids submitted by eligible bidders with same prices then priority is awarded to the bid that was submitted first.

### **Article 13**

#### **Modification and bid withdrawal**

- 13.1. No modification to bid price is allowed.
- 13.2. The Agency shall declare invalid any bid that is subject to bid price modification as set out in Article 14.1 herein.
- 13.3. Bidder cannot withdraw his bid after its submission to the Agency or in a place designated by the Agency. In case the bidder withdraws his bid after its submission, his bid deposit shall be confiscated, except the cases when the bidder withdraws its bid as set out in Article 12.4 of the Rules of Tender.

### **Article 14**

#### **Approval and rejection of bids for tendered assets/subsidiaries**

- 14.1. The Board of Directors shall take the decision for approval of any sale if during bid submission period are submitted three (3) or more bids.
- 14.2. The Board of Directors may take a decision to approve any sale even in cases when during bid submission period are submitted less than three (3) bids as in the following circumstances:
- (a) If according to Board's opinion, the highest bid price is reasonable compared to average prices of previous sales;
  - (b) The same item is tendered more than once.
- 14.3. The Board may, at its discretion, take a decision to postpone or cancel the tender in the following circumstances:
- a) If according to Board's opinion the highest bid price is not reasonable compared to average prices from previous sales.

b) If the Agency received indications or has doubts regarding any collusion between bidders or any other illegal or irregular activity caused in relation to tender process.

14.4. The Board may, for any reason, postpone determination of provisional winning bidder or reject the bid until a later date following the receipt of information from the management.

14.5. Comparison of the highest bid price with average prices of previous sales shall be made according to the methodology applied by sales procedures.

14.6. In cases when tender is cancelled, The Agency shall notify in writing the highest bidder regarding such cancelation. In this case:

- a) As stipulated in the Rules of Tender, confiscated bid deposits shall not be returned by the Agency to any bidder.
- b) All bid deposits received by the Agency shall be returned to the bidders within 10 business days starting from the day of annulment of the tender.
- c) Bid deposit and administrative fee shall be returned to bidders if the Agency withdraws any asset from tendering process before submission of bids;
- d) Administrative fee shall be returned to the bidders if the bidders have not submitted their bids;

The Agency shall not be held responsible for any cost or liability arising to any bidder or third party;

14.7. The management shall in advance provide the Board with respective recommendation for approval or rejection of bids.

## **Article 15** **Sales contract**

15.1. The Agency and provisional winning bidder shall make reasonable endeavours to sign sales contract within 20 (twenty) business days from the official notice to the winning bidder on his selection by the Agency.

15.2. The Agency may, at its discretion by notifying the provisional winning bidder, extend the term stipulated in article 15.1 in case it believes it is reasonably necessary to review any aspect of sale contract or due to other circumstances resulting in delay as for example background check for provisional winner.

15.3. Provisional winning bidder should endeavour to undertake necessary actions to close tender process including actions related to sale contract closure.

- 15.4. Negotiations between the Agency and provisional winning bidder related to sale contract shall be avoided and provisional winning bidder must not require modification of highest bidding price, subsidiary, tendered items, terms and content of contract or any such action.
- 15.5. If the negotiations between the Agency and provisional winning bidder related to sales contract are unsuccessful (pursuant to reasonable opinion of the Agency), within the timeframe stipulated in article 15.1 or after any extension of such deadline, the Agency shall:
- (a) Have the right to determine the inability to accomplish the sale of the subsidiary or tendered items to provisional winning bidder;
  - (b) The Agency shall notify the provisional winning bidder regarding termination of negotiation process and all the amounts paid by the provisional winning bidder, excluding bid submission fee shall be returned to the provisional winning bidder. If the Agency deems the provisional winning bidder did not attempt to undertake necessary actions to close the tender as stipulated in article 15.3 of Rules of Tender, then bid deposit shall be confiscated from the provisional winning bidder; and
  - (c) The agency may, at its discretion, contact next eligible bidder and invite him to purchase the subsidiary or tendered items with highest bidding price. In such occasions, provisions of article 11 of Rules of Tender shall be applied accordingly that are related to second and third highest bidders.
- 15.6. Sales contract and any other related document shall be signed from an authorised representative of the Agency and an authorised representative of provisional winning bidder.
- 15.7. Sales contract and other related documents shall be signed by both parties only after payment of the total amount of the highest bid price as well as other eventual payments and obligations related to tendering process.

## **Article 16**

### **Rights reserved by the Agency**

#### **16.1. Amendments to tender terms and conditions**

The Agency reserves the right to make amendments, modifications or terminate any procedure set out in these rules of tender, at any moment during tender, without prior notice and without any cost or responsibility to the Agency. Amendments in these rules of tender shall be made in written by the Agency and shall be made public and a copy of amended rules of tender shall be delivered to each bidder.

#### **16.2. Rejection of the winning bidder**

If the Agency reveals that information provided in the application by the provisional winning bidder for registration as eligible bidder or any other information of the provisional winning bidder

is false, the Agency may reject a bid of provisional winning bidder and terminate tender procedure related to him. Bid deposit shall be confiscated from the provisional winning bidders. In such occasions, the Agency may contact the next eligible bidder and invite him to declare himself whether he wishes to purchase the subsidiary or tendered items with the highest bid price. In that case provisions of the Rules of Tender shall be applied accordingly related to the second and third bidder.

### **16.3. Contractual relationship**

- (a) The purpose of the Rules of Tender is not to constitute an agreement between the Agency and bidders. Consequently, it shall not be deemed that any contract exists between the Agency and a bidder only due to participation of such bidder in any aspect in the tender. There shall not exist any legal-binding relationship between the Agency and the provisional winning bidder until sales contract comes into force, therefore the Agency or SOE shall not have any binding relationship to the provisional winning bidder. The Agency has the discretion to approve Provisional Winning Bidder's eventual request to provide security / posting security guards to secure and protect the Subsidiary or Tendered Items. Agency's approval does not constitute a contractual relationship between the Agency and Provisional Winning Bidder, and therefore, the Agency shall not be held responsible for any costs or liabilities with regard to this matter.
- (b) Sales contract for the subsidiary or tendered items is deemed to enter into force upon signature by both parties, by the Agency and the buyer or his authorized representative. Upon signing the sales contract by the abovementioned parties, the bidder shall be considered buyer of the subsidiary or tendered items.

### **16.4. Language**

Rules of Tender are approved in Albanian and Serbian.

### **16.5. Occasions for cancelling the sales contract**

The Agency may cancel sales contract, at any time, and in the following cases;

- a) If ascertained that means utilized by the provisional winning bidder to purchase the subsidiary or tendered items are generated directly or indirectly from an illegal activity;
- b) If ascertained that during tender process, the buyer has been included in collusion; or,
- c) If ascertained that basic provisions of Rules of Tender have been avoided or violated.

**Article 17**  
**Transitional provisions**

- 17.1.** All procedures for assets subject to sale are carried out in accordance with sales rules applicable on the date of tender.
- 17.2.** All future sales shall be carried out in accordance with this regulation.

22 August 2017

**Petrit Gashi**

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**Chairman**  
**Board of Directors**  
**Privatisation Agency of Kosovo**

**ANNEX A**  
**“TENDER SCHEDULE”**

**Summary of tender schedule**

<i>Date</i>	<i>From</i>	<i>To</i>	<i>Duration</i>
<b>Publication of tender notice</b>			30 days
<b>Due diligence visits</b>			30 days
<b>Bid submission</b>	10:00	12:00	2 hours
<b>Confirmation/Assessment of bids and identification of highest bid price</b>	13:00	16:00-17:00	3-4 hours
<b>Informing eligible bidder on tender results</b>			3 days
<b>Sales Contract Negotiation with the provisional winning bidder</b>			20 (twenty) business days commencing from the date of full payment of sales price



**ANNEX B – BID PRICE STATEMENT**

Full name of Eligible Bidder: \_\_\_\_\_

Number of unit and name of asset/subsidiary: \_\_\_\_\_

LAS/Wave no: \_\_\_\_\_

**BID PRICE – INSERT BID PRICE IN FIGURES INTENDED TO PAY FOR THE SUBSIDIARY**

Hundreds Millions	Tens of Millions	Millions	Hundreds of Thousands	Tens of Thousands	Thousands	Hundreds	Tens	Units

**IN WORD**

[ \_\_\_\_\_ ]

**NOTE:**

- IN CASE OF ANY DISCREPANCY IN THE TABLE BETWEEN THE AMOUNTS IN WORDS TO THE AMOUNT IN FIGURES, THE AMOUNT IN WORDS SHALL PREVAIL AND SHALL BE TREATED AS BID PRICE.
- IN CASE THE AMOUNT PRESENTED IN FIGURES AND THE AMOUNT IN WORDS ARE UNREADABLE AND/OR ILLEGIBLE, THE BID SHALL BE DISQUALIFIED.
- NO MODIFICATION TO BID PRICE IS ALLOWED.
- THE AGENCY SHALL DECLARE INVALID THE BID IN WHICH THE BID PRICE HAS BEEN MODIFIED AS REQUIRED UNDER ARTICLE 13.1 HEREIN.
- **IN CASE THE BIDDER DOES NOT PRESENT THE BID PRICE, IN WORDS AND IN FIGURES, HIS BID SHALL BE DISQUALIFIED.**

Name & Surname: \_\_\_\_\_

Date: \_\_\_\_\_

Signature.....

This signature confirms that eligible bidder accepts abovementioned notes and agrees to abide by to the statement herein.

**Note: Please note that all fields must be completed. If any field is not completed then the bid shall be disqualified.**

**ANNEX C****“BID SUBMISSION FORM”**

**THIS PAPER MUST BE PLACED IN AN ENVELOPE OTHER THAN BID PRICE (IN COMPLIANCE TO ARTICLE 8.6 (a) (i) OF THESE RULES OF TENDER)**

**To:** Privatisation Agency of Kosovo  
Str. Agim Ramadani no. 23, (former-Str. Ilir Konushevci No. 8) Prishtina, Republic of Kosovo

**BIDDERS CONTACT INFORMATION**

Name of Bidder: .....  
(for natural person –Name and Surname, for legal entity – Name of legal entity)

Name of representative (if the bidder is a legal entity) .....

Address: .....

Telephone no. ....

E-mail: .....

Personal number/ Business registration number: .....

**STATEMENT**

- I hereby acknowledge that I have read and understood the terms and conditions of the Rules of Tender and confirm that I am bound by the aforementioned terms of the Rules of Tender;
- I am not a prohibited bidder for the purpose of these Rules of Tender and I fully abide by the terms and conditions noted in Article 4 of the Rules of Tender;
- I am informed of the existence of electronic files containing information and significant documentation, including the document called “Memorandum of Information” and “Certain legal and other risks” in relation to Socially Owned Enterprises, subsidiary or tendered items which may affect my decision to submit the bid and/or bid price.
- I have attached all required documents to the bid as listed in section 8.6 of this Rules of Tender.

Signature .....  
For and on behalf of the bidder

Date: .....