



REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO  
AGJENCIA KOSOVARE E PRIVATIZIMIT - KOSOVSKA AGENCIJA ZA PRIVATIZACIJU - PRIVATISATION AGENCY OF KOSOVO

**PLEASE NOTE: THESE ARE TEMPLATE ORDINARY SPIN OFF RULES OF TENDER FOR THE TENDER AND SALE OF A SOCIALLY-OWNED ENTERPRISE. PLEASE CONTACT THE MARKETING AND INVESTOR RELATION UNIT SALES OF THE PRIVATISATION AGENCY OF KOSOVO FOR FURTHER INFORMATION.**

**Rules of Tender  
for the  
Privatisation  
of Newco “Famipa” L.L.C./Privatisation Wave 49  
through spin off method**

These Rules of Tender set out the guidelines and procedures for submitting a Bid (as hereinafter defined) in the tender of the Subsidiary (as hereinafter defined). A person, through their participation in any aspect of the tender, agrees and undertakes to be bound by the terms of these Rules of Tender.

**1. Definitions and Interpretation**

1.1 *Definitions*

Unless the context otherwise requires the following definitions shall apply throughout the Rules of Tender:

“**Affiliated Company**” is any corporation or business entity which:

- (1) (a) Bidder directly or indirectly possesses and Controls or (b) is in the ownership or in Bidder’s control. For the purpose of this definition, the meaning of the word “possessed” shall mean ownership of over 50% of share capital of that sort of corporation or ownership of over 50% of interest of that sort of entity; or
- (2) (b) has cooperation relations with the Bidder established through a written instrument which is legally binding as (i) agreement for joint participation, (ii) joint enterprise or (iii) has a contract for managerial services. Duties of parties under this sort of written instrument must clearly be (a) related to Required activities for the business of post

privatisation of subsidiary; (b) establish material inclusion scale for each party in accordance to industrial standard normative of Activities required for the business; (c) emphasize issued material pledges by each party in support to Foreseen business activities of the subsidiary; and (d) emphasize engagements, liabilities and responsibilities of each party in support to above mentioned activities under (a), (b) and (c).

**“Agency”** means the Privatization Agency of Kosovo (hereinafter referred to as “Agency”) which according to the Law No. 03/L-067 on the Privatization Agency of Kosovo is an independent public body that exercises functions and responsibilities in a fully independent way. Also, basing on article 10 of this law, Agency was established in accordance to Regulation 2002/12 on “Establishment of the Kosovo Trust Agency”.

**“Agent”** means anyone acting as agent or acting directly or indirectly on behalf of, or under the instructions of, another person, whether in a disclosed or undisclosed manner.

**“Applicable Law”** means (i) the applicable law in Kosovo as specified by UNMIK Regulation No. 1999/24 on the “ Applicable Law” in Kosovo, dated December 02,1999, as amended on “ The Applicable Law “ in Kosovo ”; and (ii) laws and subsidiary legal acts lawfully promulgated or issued by a public authority of the Republic of Kosovo.

**“Asset”** means an asset or Minority Stake over which the Agency exercises its authority pursuant to Articles 5.1(a)(ii) and 5.1(a)(iii) of the present law.

**“Background Checks”** means any investigations or checks carried out by the Agency or on behalf of the Agency to (i) confirm the origin of the purchase price funds (ii) for the purposes of the Agency confirming that the Provisional Winning Bidder is not a Prohibited Bidder, (iii) for the purposes of compliance with Applicable Law or international best practice and (iv) any other checks or investigations as may be determined by the Agency.

**“Beneficial Owner”** means the natural or legal person or persons or entity or entities, enjoying the legal or beneficial ownership, howsoever arising or structured, or some or all of a Bidder, regardless of in whose name the ownership of the Bidder is registered.

**“Bid”** means the collection of information and documentation set out in section 8 (including (but not limited to Bid Price), which is submitted by an Eligible Bidder, in accordance with section 10.

**“Bidder”** means any Potential Bidder or Eligible Bidder or Provisional Winning Bidder, as the case may be, but excluding a Prohibited Bidder.

**“Bid Deposit”** means the refundable bid deposit of **€ 100,000 (one hundred thousand euro)** paid by an Eligible Bidder to the Agency, in accordance with section 9.2.

“**Bid Price**” means the amount stated in Euro (€) bid by an Eligible Bidder for the shares of the Subsidiary and the Tendered Items.

“**Bid Submission Fee**” means the non refundable bid submission fee of **€2,000 (two thousand euro) paid** by an Eligible Bidder to the Agency in accordance with section 9.1.

“**Bid Submission Period**” means **13 April 2011**, between **[10:00 and 12:00]** Kosovo time, during which Bids must be submitted to the Agency, details of which are also set out in the Tender Notice.

“**Bid Submission Form**” means the document, in the form set out in Annex C, to be submitted by each Eligible Bidder in accordance with section 8.3(a)(i).

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

“**Business Day**” means a day on which banks and institutions are generally open for business in Prishtinë/Priština, Kosovo and specifically excluding Saturdays, Sundays and public holidays in Kosovo.

“**By-law**” means the by-laws of the Agency or resolutions brought by the Board of the Agency, defined in Article 14.1 of the present Law on the Privatization Agency of Kosovo, in force,

“**Control Person**” means any legal or natural person or entity to whose orders, directions and control a legal person or entity is accustomed to act, whether the Control Person occupies a formal position, such as, **by way of example only**, a managing director, a chief executive officer, a chairman of the board of directors or otherwise as, **by way of example only**, a major shareholder.

“**Corporation**” means a limited liability company or a joint stock company registered in Kosovo and recognized as such by the Regulation/ Law on Business Organizations.

“**Creditor**” means a person or entity with a valid claim as a creditor against an Enterprise and / or to an Asset.

“**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 only of which is set out in the Information Memorandum and information in relation to which is included in the Data Room, and which shall include the following:

- (1) The net unpaid VAT liability of the SOE, exclusive of interest and penalties, arising during the 12 month period ending on the date of the completion of the sale of the Subsidiary;
- (2) The unpaid property tax liability of the SOE, in respect of the immovable property comprised in the Tendered Items, arising during the 12 month period ending on the date of the completion of the sale of the Subsidiary;

- (3) The unpaid goods and services liabilities of the SOE (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 period ending on the date of the completion of the sale of the Subsidiary;
- (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.

**“Data Room”** means the data room established by the Agency wherein certain information and documentation relating to the SOE and the Tendered Items shall be placed for inspection by the Bidders.

**“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 by the Agency to the Provisional Winning Bidder.

**“Director”** means a member of the Board.

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

**“Eligible Bidder”** means a Potential Bidder who has been registered as an Eligible Bidder, in accordance with section 6.

**“Eligible Bidders Register”** means the confidential register of all registered Eligible Bidders, which is compiled and maintained by the Agency, in accordance with 6.6.

**“Eligibility Registration Form”** means the form issued by the Agency to an Eligible Bidder, in accordance with section 6.5, evidencing that the Eligible Bidder has successfully been registered as an Eligible Bidder and included on the Eligible Bidders Register.

**“Eligibility Registration Number”** means the unique number corresponding to an individual Eligible Bidder that is issued by the Agency to an Eligible Bidder, in accordance with section 6.5, and which is noted on the Eligibility Registration Form.

**“Enterprise”** means an enterprise over which the Agency exercises its authority pursuant to Article 5.1(a)(i) of the Law on Privatization Agency of Kosovo.

“Bidder of employee ranks” means:

- (1) Any employee or current SOE employee acting alone or in partnership with any other person; or
- (2) Any subject whereby one or more SOE employees are beneficiary owners who may be possible bidders.

“**Executive Secretariat**” means the executive secretariat of the Board as established by Article 11.5 of Law on the Privatization Agency of Kosovo.

“**FRY and SFRY**” means the former Federal Republic of Yugoslavia and the former Socialist Federal Republic of Yugoslavia, respectively.

“**Highest Bidder**” means the Eligible Bidder who submits the Highest Bid Price for the Subsidiary.

“**Highest Bid Price**” means the highest Bid Price submitted by any Eligible Bidder during the Tender.

“**Information Memorandum**” means the document (including all updates) prepared by the PAK and circulated to Bidders, which sets out background information on the SOE including (but not limited to): (1) a summary of the history, location and business of the SOE; (2) the key assets of the SOE; (3) an illustration of the Tendered Items; (4) details of any contracts that will be transferred to the Subsidiary; and (5) other information in respect of the SOE deemed pertinent by the Agency.

“**Initial Charter Capital**” means **1,250 € (one thousand and two hundred and fifty euro)**, which was or will be paid into the charter capital of the Subsidiary by the Agency for the purposes of establishing the Subsidiary (and which amount, for the avoidance of doubt, is to be paid to the Agency (by way of reimbursement) by the Provisional Winning Bidder, in addition to the Highest Bid Price, in accordance with these Rules of Tender).

“**Initial Payment**” means the amount equal to the total of 25% (Twenty Five Percent) of the Highest Bid Price **PLUS** the Initial Charter Capital **LESS** the Bid Deposit.

“**International Civilian Representative**” means the mandated responsible authority according to the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 and Constitution of Republic of Kosovo.

“**Law on Enterprises**” means the SFRY Law on Enterprises (77/88), as amended by the SFRY laws 40/89, 46/90 and 61/90.

“**Obligation for Preserving Current Business Activity**” means the Buyer should maintain the continuance of current business activity of NewCo in the future.

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

**“Minority Stake”** means a stake of 50 percent or less that is defined by Applicable Law as social capital or socially-owned in any legal entity that is otherwise privately owned.

**“Owner”** means a person or entity with a valid claim to an ownership interest or right in or to an Enterprise or an Asset.

**“Proceeds”** means the proceeds from a sale, transfer or liquidation of an Enterprise or Asset pursuant to Articles 6, 8 or 9 of the Law on Privatization Agency of Kosovo, the net amount of any payment required to be made according to Article 10 of the UNMIK Regulation no. 2003/13 on Transformation of Immovable Property.

**“Potential Bidder”** means any natural or legal person or entity making an application to be registered as an Eligible Bidder, in accordance with section 4 of these Rules of Tender.

**“Prohibited Bidder”** means any natural or legal person or entity, details of which are set out in section 3.1, that shall not be eligible to be registered as an Eligible Bidder and are accordingly prohibited from submitting a Bid.

**“Provisional Winning Bidder”** means any of the Highest Bidder, the Second Highest Bidder or the Third Highest Bidder that has been notified by the Agency that it is the Provisional Winning Bidder and that is entitled to complete the purchase of the Subsidiary at the Highest Bid Price.

**“Law on Business Organizations”** means Law no. 02/L-123 approved by the Kosovo Assembly announced in the Official Gazette no.39.

**“Regulation on Essential Labour Law”** means UNMIK Regulation No.2001/27, dated 8 October 2001, “On Essential Labour Law in Kosovo”, as amended from time to time.

**“Required Business Activity”** means professional experience in metal processing in any of last three (3) years of every natural, legal or subject which submits an application for inclusion in the bidding process and Eligible Bidder Registry as Eligible Bidder, an experience which must be demonstrated before the Agency.

**“Regulation on Reorganization and Liquidation of Enterprises”** means UNMIK Regulation No.2005/48, dated 21 October 2005, “On the Reorganization and Liquidation of Enterprises and their Assets under the Administrative Authority of the Kosovo Trust Agency”, inherited by the Privatization Agency of Kosovo.

**“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”.

**“Review Committee”** means a committee established according to the Article 24 of Law on Privatization Agency of Kosovo.

**“Representative”** means any person legally authorised to act on behalf of a Bidder throughout the Tender, including the negotiation and execution of the Share Sale Agreement and any documents related thereto.

**“Second Highest Bidder”** means the Eligible Bidder who submits the second highest Bid Price for the Subsidiary.

**“Share Sale Agreement”** means the agreement to be entered into between the Provisional Winning Bidder and the Agency (where the Agency is acting on behalf of the SOE) pursuant to which the entire issued share capital of the Subsidiary shall be sold to the Provisional Winning Bidder in consideration for the payment to Agency of the Highest Bid Price.

**“SOE”** means the Socially-Owned Enterprise: NPM “Famipa” Prizren (PRZ024) also previously known as (i) Fi Trepça 496/89 PS-PD “Famipa” (31/12/1989), (ii) Fi. 7272/92 JSC “Famipa” Prizren (24/11/1992) established in compliance to laws of Federal Republic of Yugoslavia or any other applicable law.

**“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.

**“Special Chamber”** means the Special Chamber within the Supreme Court of Kosovo established in accordance with UNMIK Regulation No. 2002/13, dated 13 June 2002, “On the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters”, as amended from time to time.

**“Subsidiary”** means the limited liability company to be established by the Agency (where the Agency is acting on behalf of the SOE) that will receive the Tendered Items and which will be tendered for sale pursuant to the Tender.

**“Tender”** means the entire process whereby the Agency arranges the sale of the Tendered Items and the Subsidiary, including the identification of the Highest Bid Price and the completion of the sale of the Subsidiary with a Provisional Winning Bidder.

**“Tender Documents”** mean (1) these Rules of Tender, (2) the Tender Schedule, (3) the Tender Notice, (4) the Information Memorandum, (5) a Confidentiality agreement to be signed by each Bidder and the Agency, (5) the draft Share Sale Agreement and draft declarations of transfer (including any attachments to any of these documents) and (6) any other document that may reasonably be determined to be a Tender Document by the Agency.

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

“**Tender Schedule**” means the document setting out important time periods and dates in respect of the Tender, which is attached hereto as Annex A.

“**Tendered Items**” means certain of the moveable and immovable assets and Current Liabilities of the SOE, details of which are set out in the Information Memorandum that are to be tendered for sale pursuant to the Tender and which will in due course be transferred to the Subsidiary.

“**Third Highest Bidder**” means the Eligible Bidder who submits the third highest Bid Price for the Subsidiary.

“**Transformation**” means, any of the following with respect to a legal entity: a merger, transformation, (re-) registration, incorporation as a joint stock or limited liability company or partnership or other legal entity, 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.

## 1.2 *Interpretation*

- (a) Unless the context otherwise requires:
- (i) the term person includes natural persons, unincorporated associations or corporate bodies;
  - (ii) 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;
  - (iii) any reference to the singular includes reference to the plural.
- (b) Headings are inserted for convenience only and do not affect the construction or interpretation of these Rules of Tender.
- (c) Any reference to a clause means a clause or sub-clause, of these Rules of Tender, as the case may be.
- (d) If any term or provision in the Rules of Tender is held to be illegal or unenforceable in whole or in part, such term shall be deemed not to form part of these Rule of Tender but the remaining terms of these Rules of Tender shall not be affected

## 2. **Introduction**



## 2.1 Overview of the Agency's Role

The Privatization Agency of Kosovo (hereafter the "Agency") is established as an independent public body that shall carry out its functions and responsibilities with full autonomy. The Agency shall possess full juridical personality and in particular the capacity to enter into contracts, acquire, hold and dispose of property and have all implied powers to discharge fully the tasks and powers conferred upon it by the present law; and to sue and be sued in its own name. The Agency is established as the successor of the Kosovo Trust Agency regulated by UNMIK Regulation 2002/12 "On the establishment of the Kosovo Trust Agency", as amended, and all assets and liabilities of the latter shall be assets and liabilities of the Agency.

For additional information regarding the Agency, please visit the following website:

[www.pak-ks.org](http://www.pak-ks.org)

## 2.2 Sale Structure and Bid Overview

The Agency will establish the Subsidiary on behalf of the SOE and the Agency shall hold the issued share capital of the Subsidiary in trust for the SOE. As an integral part of the Tender the Agency will undertake the sale of the issued share capital of the Subsidiary, on behalf of the SOE, and the Tendered Items will, in due course, be transferred to the Subsidiary.

The Subsidiary will be tendered for sale in a public international auction, in accordance with the procedures set out in these Rules of Tender. There shall be one round of bidding during the Tender and these Rules of Tender set out the procedures governing the Tender, including the manner in which a Potential Bidder can be registered as an Eligible Bidder, the information and documentation to be included with a Bid, the identification of the Highest Bid Price and the manner of accomplishing the sale of the Subsidiary with a Provisional Winning Bidder.

In order for a Bid to be considered, the Bid must comply with these Rules of Tender. Through a Bidder's participation in any step of the Tender or the submission of a Bid, the Bidder agrees and undertakes to be bound by the terms of these Rules of Tender.

By submitting a Bid, a Bidder understands and agrees that it is bidding to purchase the Subsidiary and the Tendered Items and that **the Agency shall only complete the sale of the Subsidiary at the Highest Bid Price.**

**The Highest Bidder shall be entitled to complete the purchase of the Subsidiary and the Tendered Items at the Highest Bid Price.**

**If, for whatever reason, the sale does not proceed with the Highest Bidder then, subject to these Rules of Tender, the Second Highest Bidder shall have the option, but not the obligation, to complete the purchase of the Subsidiary and the Tendered**

**at the Highest Bid Price. If, for whatever reason, the sale does not proceed with the Second Highest Bidder then, subject to these Rules of Tender, the Third Highest Bidder shall have the option, but not the obligation, to complete the purchase of the Subsidiary and the Tendered at the Highest Bid Price.**

### 2.3 *Tender Schedule*

The Agency shall prepare the Tender Schedule. All Bidders are urged and recommended to consult the Tender Schedule in order to inform themselves of the important time periods and dates set out in the Tender Schedule.

## **3. Prohibited Bidders**

3.1 For the purpose of this Tender the following shall be Prohibited Bidders:

- (a) Publicly-owned Enterprises and Socially-owned Enterprises;
- (b) Governmental departments, agencies or institutions or legal persons or entities in respect of which the Government of Kosovo is the Beneficial Owner or Control Person;
- (c) In respect of any sovereign government or state, its organs of state, departments, agencies or institutions or legal persons or entities of which a sovereign government or state is the Beneficial Owner or Control Person;
- (d) natural and legal persons who are currently subject to bankruptcy or insolvency proceedings;
- (e) natural persons who have been found guilty of a felony which was committed after June 1999 or who are otherwise subject to criminal proceedings;
- (f) natural and legal persons who (i) are in material breach of a contract entered into with the Agency or with any of the enterprises administered by the Agency (the existence and materiality of such breach to be determined by the Agency in its sole discretion) (ii) have any fine or debt outstanding to the Agency or an enterprise administered by the Agency; (iii) are on a list of persons or entities with whom the Agency or the European Union is prohibited by a recognized international entity, such as OFAC, from carrying out transactions, including a list of persons who are the subject of international sanctions or export control rules; or (iv) are natural or legal persons who have not paid fines imposed upon them by the Agency, or subject of any claim or dispute (whether the matter is in court or otherwise).
- (g) natural and legal persons who, in the reasonable opinion of the Agency:

- (i) have performed acts that allow the Agency to cancel a privatisation-related tender in accordance with section 15.2(e);
  - (ii) have otherwise been in breach of the rules of tender for any privatisation-related tender conducted by the Agency; or
  - (iii) have withdrawn from their position as the provisional winning bidder under a privatisation-related tender more than one (1) time, through the failure to deposit the amount of their winning bid price within the time period required by the Agency or through their refusal to execute the sales documentation, **during any related tender conducted by the Agency after the so-called “Wave 7” tenders.**
- (h) natural and legal persons acting as an Agent for any of the persons or entities referred to in sections 3.1(a) – 3.1(g) above or any Agent who has not disclosed his/her/its principal(s), as required by these Rules of Tender;
- (i) legal entities whose Beneficial Owners or Control Persons fall within the categories outlined at section 3.1 (a) – 3.1(h) above.
- 3.2 Any Bid submitted by a Prohibited Person shall automatically be disqualified, notwithstanding that it would otherwise be in full compliance with the terms and conditions set out in these Rules of Tender.

#### **4. Due Diligence**

- 4.1 **Due diligence and information collection and analysis in respect of the SOE, the Tendered Items and the Subsidiary shall be the sole responsibility of, and at the total risk of, each Bidder.**
- 4.2 The Agency shall establish a Data Room in respect of the SOE and the Tendered Items. The Agency shall allow Bidders to access the information and documentation contained in the Data Room in relation to the SOE and the Tendered Items, for the purpose of their due diligence in respect of the SOE and the Tendered Items. Bidders are hereby put on notice of the existence of the Data Room and deemed to be on notice of the contents of the Data Room.
- 4.3 The Agency shall be solely responsible for coordinating access by Bidders to the Data Room. Access by Bidders to the Data Room may only take place on the dates and at the times specified in the Tender Schedule. The Agency may decline to grant access to the Data Room to any person and to any and all other information and documentation controlled by the Agency, where such person, in the sole discretion of the Agency, does not appear to be a genuine Bidder.

- 4.4 Before submission of a Bid, the Agency shall, within the limits of the Agency's administrative resources, use reasonable endeavours to allow all Bidders an opportunity to visit the site and premises of the SOE and the Tendered Items.
- 4.5 The Agency shall be solely responsible for coordinating visits by Bidders to the site and premises of the SOE and to the Tendered Items. Visits by Bidders to the site and premises of the SOE and the Tendered Items may only take place on the dates and at the times specified in the Tender Schedule. The Agency may decline to grant access to any person to the site and premises of the SOE and the Tendered Items, where such person, in the sole discretion of the Agency, does not appear to be a genuine Bidder.
- 4.6 Bidders shall not contact the SOE directly and Bidders shall raise inquiries and schedule appointments with the Agency only.
- 4.7 By submitting a Bid a Bidder acknowledges and confirms to the Agency that the Bidder has carried out a due diligence and an independent investigation and assessment of the SOE, the Tendered Items and any and all information and documentation in the Data Room and accordingly the Bidder has satisfied itself as to the conditions and operations of the SOE, the Tendered Items and the accuracy of any and all of the information and documentation in the Data Room.
- 4.8 **The failure of a Bidder to carry out a due diligence and an independent investigation and assessment of the SOE, the Tendered Items and any and all information and documentation in the Data Room shall not relieve such a Bidder from performing its obligations under the Share Sale Agreement and/or any related documentation. Neither the Agency nor the SOE shall assume any risk or responsibility for any conclusions or interpretations made by any Bidder following such a Bidder's due diligence and an independent investigation and assessment of the SOE, the Tendered Items and any and all information and documentation in the Data Room.**
- 4.9 Any Bid contingent upon further due diligence or investigation or upon another Bidder's Bid may be deemed incomplete and unacceptable by the Agency.
- 4.10 As a result of circumstances in Kosovo, it is acknowledged and confirmed by all relevant parties that certain information and documentation concerning the SOE and the Tendered Items may have been lost, destroyed or removed from the site and premises of the SOE and accordingly shall be considered to be no longer available. Therefore, Bidders are hereby put on notice that any analysis of the information or documentation may be incomplete and should be accompanied by a thorough assessment of the SOE and the Tendered Items. Neither the Agency nor the SOE shall be responsible or liable in respect of any deficiency in the information or documentation available in respect of the SOE or the Tendered Items.
- 4.11 The Agency shall not be required to translate any of the information or documentation in respect of the SOE, the Tendered Items or the Subsidiary for Bidders or to provide any

interpretation services. The Bidder shall be responsible for any required interpretation and translation of information or documentation during the due diligence process. Any persons supplying translation or interpretation services to the Bidder shall be required to comply with any confidentiality obligations set out in these Rules of Tender and may be required by the Agency to sign a confidentiality statement.

- 4.12 The Bidder must sign the **Confidentiality Agreement** included with the Tender Documents and return it to the Agency before the Bidder will be permitted to access the information and documentation contained in the Data Room or to conduct a visit to the site or premises of the SOE or the Tendered Items for the purpose of their due diligence. A Bidder may also be required to agree to Data Room rules, before being granted access to the Data Room.

## **5. Obtaining Tender Documents**

- 5.1 Bidders shall be entitled to obtain copies of the Tender Documents.
- 5.2 Bidders shall be instructed in the Tender Notice to contact a named person at the Agency, prior to a deadline stated in the Tender Notice, in order to receive the Tender Documents.
- 5.3 The Agency shall endeavour to provide the Tender Documents to the Bidders within 3 Business Days of receipt of a request for the Tender Documents and the Tender Documents shall normally be provided to Bidders free of charge, if sent by the Agency to a Bidder by e-mail or by the regular post. A Bidder wishing to receive the Tender Documents by another method shall bear the cost delivery of such other method.

## **6. Eligibility Registration Procedures**

- 6.1 Prohibited Bidders are ineligible for registration as an Eligible Bidder.
- 6.2 In order to be eligible to submit a Bid in the Tender, a Potential Bidders must be registered as an Eligible Bidder.
- 6.3 In order to be registered as an Eligible Bidder a Potential Bidder must submit an application for registration as an Eligible Bidder, **at least 5** Business Days prior to the Bid Submission Period. The Agency shall only register a Potential Bidder as an Eligible Bidder if the Potential Bidder is determined by the Agency to have satisfied the requirements for registration set out in this section 6.
- 6.4 For the purpose of pre-qualification, possible bidder must submit to the Agency information, documents and documentary proof to the extent Agency deems admissible as fulfilling the following criteria:

- (a) Evidence that he or the affiliated company possesses a professional managing team that could prove professional experience in metal processing for at least three (3) past years.
- (b) Evidence that it possesses a team consisting of capable and professional personnel in executing the activities of enterprise.
- (c) In case the foreign Bidder owns an Affiliated Company, as defined in the part (2) on Affiliated Companies, the foreign Bidder must provide the Agency with a copy of a written instrument which is legally binding regulating the relation of the foreign Bidder with such affiliated company, and that document must include information provided with sub/articles (a)-(d) of part (2) of the definition on Affiliated Companies.

**6.5** Any employee participating as Bidder must provide the Agency with documentary evidence to the extent that the Agency, at its discretion, shall deem eligible that the employee participating as a Bidder satisfies the following requirements:

- (a) He or the Affiliated Company possess a managerial team with substantial experience in operating or business management whose basis is the Required activity for the business; and

(b) In case the employee participating as a Bidder owns an affiliated company as defined in part (2) of the definition over Affiliated companies of the tender rules herein, the employee as a bidder of the SOE must submit a copy of a legally binding written instrument which establishes his relation with the Affiliated company. The written statement must contain the information stated in sub/articles (a) to (d) of part (2) on the definition of Affiliated Companies

6.5.1. Potential Bidder must submit the following additional information and documentation to the Agency:

- (a) the Bidder's name, address, and other contact details and the name and contact details of the Representative serving as main contact with the Agency
- (b) information below regarding possible bidder:
  - (i) in case the bidder is **natural person**, a certified copy of ID or his passport
  - (ii) if a possible bidder is a **legal person**, a certified copy of the certificate for the registration of his business activity and the identity of beneficiary owners and controlling persons (identity check of beneficiary owners and

controlling persons of this article 6.5(b)(ii) does not require legal subjects located on the list of internationally recognized grants with regard that such lists are available).

- (iii) if the possible bidder is a **partnership** then a certified copy of founding partnership documents as well as beneficiaries and controlling persons.
- (iv) if the possible bidder is a **consortium** composed by **legal persons, partnership** and **companies** then certified copies of founding documents for the consortium along with certified copies of IDs and information regarding business registration of participants in the consortium including information regarding the identity of beneficiary partners and controlling persons of consortium members; or
- (v) if the possible bidder submits an offer in the quality of an agent for another party then a statement for such representative, name and information of that party along with information with that party as foreseen by article 6.5(b)(i) up to 6.4(b)(iv) above including information regarding identity of beneficiary owners and controlling persons of consortium members
- (vi) written statement which states that bidder is not a bidder with bidding restraint along with any supporting documents deemed relevant.

- 6.6 The Agency shall issue an Eligibility Registration Form and an Eligibility Registration Number to each registered Eligible Bidder. An Eligible Bidder may use its Eligibility Registration Form and Eligibility Registration Number in any future tenders organised by the Agency, unless the Eligibility Registration Form and Eligibility Registration Number have been cancelled or otherwise determined invalid by the Agency, in the Agency's absolute discretion.
- 6.7 The Agency shall compile and maintain the Eligible Bidders Register.
- 6.8 All information and documentation submitted by a Potential Bidder by way of application for registration as an Eligible Bidder shall be in type written form.
- 6.9 All information and documentation submitted by a Potential Bidder when applying for eligibility registration shall be submitted in one of the official languages in Kosovo (Albanian or Serbian) or in English (with the exception of passports and/or identification cards referred to at article 6.5.1, which according to the Bidders choice may be submitted in their original language).
- 6.10 By applying to be registered as an Eligible Bidder, a Potential Bidder is confirming and representing that it has the authority, whether implied or otherwise, to disclose the information and documentation contained in the application for registration as an Eligible Bidder and that all natural or legal persons or entities mentioned in such application have consented to such disclosure. By applying for registration as an Eligible Bidder, a

Potential Bidder also agrees to hold harmless and indemnify the Agency in respect of any claim that may be made against it by any person or entity in relation to such disclosure.

6.11 **The Agency shall use reasonable efforts to ensure that its staff treat all information provided by a Potential Bidder in an application for registration as an Eligible Bidder as confidential and the Agency shall not disclose such information to third parties except (a) as may be required by Applicable Law or by an order of a court of competent jurisdiction or (b) to law enforcement agencies inside or outside of Kosovo or (c) to any organs instructed by the Agency for the purposes of the Background Checks and any other reasonable investigations or (d) if a Potential Bidder has otherwise agreed in writing.**

6.12 The Agency reserves the right to revoke the registration of an Eligible Bidder and to strike such an Eligible Bidder from the Eligible Bidders Register, at any time, if the Agency determines that an Eligible Bidder is a Prohibited Bidder or if an Eligible Bidder is not otherwise in compliance with the requirements of this section 6.

6.13 The Agency may, at anytime, up to and including the completion of the sale of the Subsidiary, request that a Bidder provide such further information, confirmations, or documentation as the Agency may require for the purpose of confirming any of the matters referred to in this section 6.

## **7. Background Checks**

7.1 The Agency shall carry out the Background Checks in respect of a Provisional Winning Bidder.

7.2 Each Eligible Bidder, by submitting a Bid, acknowledges and confirms that should the Eligible Bidder receive notification from the Agency that the Eligible Bidder is entitled to be the Provisional Winning Bidder then:

- (a) the Eligible Bidder in question shall be required to supply to the Agency any and all information and documentation requested by the Agency to facilitate the carrying out of the Background Checks;
- (b) the Agency may use relevant institutions or other third parties to carry out the Background Checks on the Agency's behalf and, accordingly, the Agency shall be entitled to furnish to use the relevant institutions or other third parties any and all information and documentation supplied to the Agency by a Provisional Winning Bidder for the purpose of the Background Checks;
- (c) while the Agency will endeavour to do everything within the Agency's power to facilitate as speedy a completion of the Background Checks as possible, the completion of the Background Checks is outside of the Agency's control and accordingly the Agency is not responsible for any delay to the completion of the



sale of the Subsidiary or any consequential loss occasioned by a Provisional Winning Bidder associated with the length of time it takes to complete the Background Checks.

- 7.3 In the event that the Background Checks provide the Agency with an adverse finding in respect of a Provisional Winning Bidder then the Agency shall:
- (a) Not complete the sale of the Subsidiary with the Provisional Winning Bidder in question; and
  - (b) Not be responsible or liable for any consequential loss or damage to the Provisional Winning Bidder in question; and
  - (c) Return to the Provisional Winning Bidder in question the Initial Payment.

## **8. Contents of Bids**

- 8.1 Only Eligible Bidders shall be entitled to submit a Bid.
- 8.2 Bids must be submitted in one of the official languages of Kosovo (Albanian and Serbian) or in English language.
- 8.3 Bids must be submitted in the following manner:
- (a) The following information and documentation must be placed in a sealed envelope with the words “**Supplemental Bid Information**” printed on the outside of the envelope:
    - (i) An original of the Bid Submission Form completed and signed by or on behalf of the Eligible Bidder;
    - (ii) A copy of the Eligibility Registration Form;
    - (iii) An original bank letter, substantially in the form of Annex D, from a reputable bank (not being a bank registered in a country which is on the ‘blacklist’ of the Financial Action Task Force (FATF)), confirming that the Eligible Bidder will have access to sufficient funds during the entire Tender period to pay its Bid Price (in the manner required under these Rules of Tender) and the Initial Charter Capital. **The bank letter must not state the Bid Price of the Eligible Bidder;**
    - (iv) Proof that the Bid Submission Fee has been transferred to an account designated for that purpose by the Agency; and

- (v) Proof that the Bid Deposit has been transferred to an account designated for that purpose by the Agency.
- (b) The Bid Price must be placed in a second, separate sealed envelope with the words “**Bid Price**” printed on the outside of the envelope. **Annex B to these Rules of Tender provides a worksheet to calculate the total amount of money to be paid by an Eligible Bidder to the Agency if the Eligible Bidder’s Bid Price is deemed to be the Highest Bid Price and the Eligible Bidder is declared the Provisional Winning Bidder. Eligible Bidders must complete this worksheet and include the completed worksheet in the sealed envelope marked “Bid Price”.**
- (c) The sealed envelopes at 8.3(a) and 8.3(b) above must together be placed in a third sealed envelope with the words “**Bid for Tender No. 49**”. There must be no other information provided on the outside of this third envelope and no information or marks which could identify the Eligible Bidder in question.
- (d) Upon the receipt of a Bid by an Agency, a number will be written on the third sealed envelope referred to at 8.3(c) and recorded on the receipt to be issued by the Agency, in accordance with section 10.3.

## 9. Bid Submission Fee and Bid Deposit

- 9.1 To offset administrative and communication costs associated with reviewing and processing Bids, each Eligible Bidder shall submit the Bid Submission Fee to the Agency with its Bid. The Bid Submission Fee shall be paid by way of a bank transfer to a bank account designated for that purpose by the Agency.
- 9.2 To ensure the good faith of Eligible Bidder, each Eligible Bidder shall also submit the Bid Deposit to the Agency with its Bid. The Bid Deposit shall be paid by way of a bank transfer to a bank account designated for that purpose by the Agency. The Agency shall credit the Bid Deposit of a Provisional Winning Bidder to the total of the Highest Bid Price and the Initial Charter Capital to be paid to the Agency to complete the purchase of the Subsidiary.
- 9.3 The Agency shall endeavour to return the Bid Deposit of all Eligible Bidders that do not submit the Highest Bid Price during the Bid Submission Period within **10** (ten) Business Days after the Bid Submission Period.
- 9.4 Bid Deposits will not be returned by the Agency to Eligible Bidders that have forfeited their Bid Deposit in a manner provided under these Rules of Tender.

## 10. Submission of Bids

- 10.1 There shall be one round of bidding during the Tender.
- 10.2 All Bids must be submitted to the Agency during the Bid Submission Period, at the Agency's Prishtinë/Priština office. The Agency shall not receive any Bids that are presented other than during the Bid Submission Period or that are delivered to any other location.
- 10.3 A receipt, signed by or on behalf of the panel of Agency employees receiving Bids, and stating the date, hour and minute of the Agency's receipt of a Bid, shall, at the time of submission of a Bid, be issued to the person submitting the Bid on behalf of the Eligible Bidder. The person submitting the Bid shall not identify the Eligible Bidder on whose behalf they are submitting the Bid. The determination of the panel of the Agency in respect of the time of submission of a Bid shall be final and may not be appealed to a court or other organ.
- 10.4 Bids shall be opened in public by the Agency, within three hours of the end of the Bid Submission Period. The Highest Bid Price shall be identified and announced in public by the Agency.
- 10.5 By the submission of a Bid, a Bidder shall be bound by the following bid conditions:
- (a) The Winning Bidder shall, in addition to the winning bid price, reimburse the Agency for the Initial Charter Capital.
  - (b) Without prejudice to any other provision of these Rules of Tender, the Winning Bidder shall supply all information and documentation requested by the Agency (i) in order to satisfy any money laundering requirements or procedures (ii) for the purposes of any investigations by the Agency to confirm the origin of the purchase price funds (iii) for the purposes of the Agency confirming that the Winning Bidder is eligible under section 1.1 of these Rules of Tender and/or (iv) for the purposes of compliance with any applicable law or international best practice, as determined by the Agency.

## **11. Ranking of Bids and Bid Selection**

- 11.1 Subsequent to the submission of Bids by the Eligible Bidders, in accordance with section 10.2, the Agency shall identify the Highest Bid Price submitted by the Highest Bidder, in accordance with section 10.4.
- 11.2 The Agency shall only complete the sale of the Subsidiary at the Highest Bid Price.
- 11.3 Subject to any other requirements set out in these Rules of Tender, the sale of the Subsidiary will be progressed with the Highest Bidder on the following terms:

- (a) Within **3** Business Days of the Bid Submission Period the Agency shall notify the Highest Bidder that it is the Provisional Winning Bidder;
- (b) Within **20** Business Days of notification by the Agency to the Highest Bidder that it is the Provisional Winning Bidder; the Highest Bidder shall pay the Initial Payment into the Designated Account;
- (c) If, for whatever reason, the Highest Bidder does not pay the Initial Payment into the Designated Account, within **20** Business Days of notification by the Agency to the Highest Bidder that it is the Provisional Winning Bidder, then the Highest Bidder shall forfeit its right to complete the purchase of the Subsidiary and its Bid Deposit;
- (d) The Agency shall arrange to carry out the Background Checks in respect of the Highest Bidder and the Agency shall notify the Highest Bidder of the findings of the Background Checks;
- (e) In the event that the Background Checks provide the Agency with an adverse finding in respect of the Highest Bidder, then the Agency shall notify the Highest Bidder and act in accordance with section 7.3 and the Agency shall proceed to contact the Second Highest Bidder in accordance with section 11.4.
- (f) In the event of there being **no** adverse finding from the Background Checks in respect of the Highest Bidder, then the Agency shall notify the Highest Bidder and the Highest Bidder shall pay the **75%** (seventy five percent) balance of the Highest Bid Price into the Designated Account within **20** (twenty) Business Days of the Agency notifying the Highest Bidder of the results of the Background Checks;
- (g) If, for whatever reason, the Highest Bidder **does not** pay the **75%** (seventy five percent) balance of the Highest Bid Price into the Designated Account within **20** (twenty) Business Days of the Agency notifying the Highest Bidder of the results of the Background Checks, then the Highest Bidder shall forfeit its right to complete the purchase of the Subsidiary and its Bid Deposit.

11.4 In the event that the sale of the Subsidiary is **not to be completed with the Highest Winning Bidder**, then the PAK will contact the Second Highest Bidder, in writing, to enquire if the Second Highest Bidder wishes to complete the purchase of the Subsidiary at the Highest Bid Price. The Second Highest Bidder shall notify the Agency, in writing, within **3** Business Days of the Agency communicating its enquiry to Second Highest Bidder, whether the Second Highest Bidder wishes to complete the purchase of the Subsidiary at the Highest Bid Price. If the PAK receives no such notification, in writing, from the Second Highest Bidder then the PAK shall be entitled to treat the failure of the Second Highest Bidder to reply as a rejection of the Agency's invitation to complete the purchase of the Subsidiary at the Highest Bid Price. Where the Second Highest Bidder does not wish to complete the purchase of the Subsidiary at the Highest Bid Price the

Agency shall proceed to contact the Third Highest Bidder in accordance with section 11.6.

11.5 Subject to section 11.4 and any other requirements set out in these Rules of Tender, the sale of the Subsidiary will be progressed with the Second Highest Bidder on the following terms:

- (a) Within 1 Business Day of the Agency receiving notification, in writing from the Second Highest Bidder that the Second Highest Bidder wishes to complete the purchase of the Subsidiary at the Highest Bid Price, the Agency shall notify the Second Highest Bidder that it is the Provisional Winning Bidder;
- (b) In the event that the Bid Deposit had already been repaid to the Second Highest Bidder, in accordance with section 9.3, then, within 2 Business Days of notification by the Agency to the Second Highest Bidder that it is the Provisional Winning Bidder, the Second Highest Bidder shall transfer the Bid Deposit to a bank account designated for that purpose by the Agency;
- (c) Within **20** (twenty) Business Days of notification by the Agency to the Second Highest Bidder that it is the Provisional Winning Bidder, the Second Highest Bidder shall pay the Initial Payment into the Designated Account;
- (d) If, for whatever reason, the Second Highest Bidder does not pay the Initial Payment into the Designated Account, within **20** (twenty) Business Days of notification by the Agency to the Second Highest Bidder that it is the Provisional Winning Bidder, then the Second Highest Bidder shall forfeit its right to complete the purchase of the Subsidiary and its Bid Deposit;
- (e) The Agency shall arrange to carry out the Background Checks in respect of the Second Highest Bidder and the Agency shall notify the Second Highest Bidder of the findings of the Background Checks;
- (f) In the event that the Background Checks provide the Agency with an adverse finding in respect of the Second Highest Bidder, then the Agency shall notify the Second Highest Bidder and act in accordance with section 7.3 and the Agency shall proceed to contact the Third Highest Bidder in accordance with section 11.6.
- (g) In the event of there being no adverse finding from the Background Checks in respect of the Second Highest Bidder, then the Agency shall notify the Second Highest Bidder and the Second Highest Bidder shall pay the 75% (seventy five percent) balance of the Highest Bid Price into the Designated Account within **20** (twenty) Business Days of the Agency notifying the Second Highest Bidder of the results of the Background Checks;
- (h) If, for whatever reason, the Second Highest Bidder does not pay the 75% (seventy five percent) balance of the Highest Bid Price into the Designated Account within

**20** (twenty) Business Days of the Agency notifying the Second Highest Bidder of the results of the Background Checks, then the Second Highest Bidder shall forfeit its right to complete the purchase of the Subsidiary and its Bid Deposit.

- 11.6 In the event that the sale of the Subsidiary is not to be completed with the Highest Bidder or the Second Highest Winning Bidder, then the PAK will contact the Third Highest Bidder, in writing, to enquire if the Third Highest Bidder wishes to complete the purchase of the Subsidiary at the Highest Bid Price. The Third Highest Bidder shall notify the Agency, in writing, within 3 Business Days of the Agency communicating its enquiry to Third Highest Bidder, whether the Third Highest Bidder wishes to complete the purchase of the Subsidiary at the Highest Bid Price. If the PAK receives no such notification, in writing, from the Third Highest Bidder then the PAK shall be entitled to treat the failure of the Third Highest Bidder to reply as a rejection of the Agency's invitation to complete the purchase of the Subsidiary at the Highest Bid Price. Where the Third Highest Bidder does not wish to complete the purchase of the Subsidiary at the Highest Bid Price then section 11.8 shall apply.
- 11.7 Subject to section 11.6 and any other requirements set out in these Rules of Tender, the sale of the Subsidiary will be progressed with the Third Highest Bidder in a manner similar to that set out in section 11.5. In such cases the term Second Highest Bidder will be replaced in section 11.5 by the term Third Highest Bidder.
- 11.8 Without limiting the generality of section 15.1 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 is not achievable, in accordance with the requirements of this section 11, then the Agency shall be entitled to postpone or cancel the Tender as it sees fit.
- 11.9 Notwithstanding anything in sections 11.3 and 11.5 respectively no Provisional Winning Bidder shall forfeit their Bid Deposit for failing to progress the purchase of the Subsidiary or for failing to make the payments required within the time limits set down under sections 11.3 and 11.5 respectively if the Provisional Winning Bidder can provide objective independent evidence, to the satisfaction of the Agency, that such failures are as a result of intimidation, duress or threats.
- 11.10 In the event that there are two or more Bids are submitted by Eligible Bidders, containing identical Bid Prices, then the ranking of the Bids will be determined as follows:
- (a) If one of the Bids has participation by an employee or employees of the SOE, then such Bid shall have priority; or
  - (b) If none of the Bids or more than one of the identical Bids has participation by an employee or employees of the SOE, then priority shall be given to the earliest submitted Bid among the Bids; and

the Agency's determination(s) as to whether a Bid has participation by an employee or employees of the SOE and/or the timing of the receipt of bids shall be final and may not be appealed to a court or other organ.

- 11.11 The funds used by a Provisional Winning Bidder to pay the Highest Bid Price shall not be paid in cash and shall not come from any FATF blacklisted jurisdiction.

## **12. Modification, Withdrawal Late Submission of Bids**

An Eligible Bidder may not modify any aspect of its Bid (except with the Agency's written permission) or withdraw its Bid after the Bid has been submitted to the Agency. No Bids will be accepted after the end of the Bid Submission Period.

## **13. Negotiation of the Share Sale Agreement**

- 13.1 The Agency and the Provisional Winning Bidder shall each use all reasonable endeavours to execute the Share Sale Agreement within **90 Business Days** from the date of notification by the Agency to the Provisional Winning Bidder that it is the Provisional Winning Bidder.
- 13.2 The Agency may in its sole discretion, on notice to the Provisional Winning Bidder, extend the period of time referred to in section 13.1, if the Agency believes that additional time is reasonably necessary for the purposes of negotiating the terms of the Share Sale Agreement or as a result of some other circumstances resulting in delay, such as (but not limited to) the Background Checks.
- 13.3 The Provisional Winning Bidder shall use its best efforts to conclude the Share Sale Agreement and any related documents with the Agency.
- 13.4 Negotiations between the Agency and the Provisional Winning Bidder pertaining to the Share Sale Agreement shall be kept to a minimum and the Provisional Winning Bidder may not require the alteration of the Highest Bid Price, the Tendered Items nor require the material alteration of any representations and warranties or any other material terms of the Share Sale Agreement or related documents.
- 13.5 If the negotiations between the Agency and the Provisional Winning Bidder, pertaining to the Share Sale Agreement, are (in the reasonable opinion of the Agency) unsuccessful within the period of time referred to in section 13.1 (or any extension of that time period) then the Agency shall be:

- (a) Entitled to determine that it is not possible to complete the sale of the Subsidiary to the Provisional Winning Bidder in question on terms agreeable between that Provisional Winning Bidder and the Agency; and
- (b) The Agency will notify the Provisional Winning Bidder that the negotiation process has been terminated and all sums paid by the Provisional Winning Bidder, exclusive of the Bid Submission Fee, will be returned to the Provisional Winning Bidder **PROVIDED** that in the event that the Agency determines that the Provisional Winning Bidder has not used its best efforts to conclude the Share Sale Agreement and any related documents, in accordance with section 13.3, then the Provisional Winning Bidders shall forfeit the Bid Deposit; and
- (c) The Agency may, at its sole discretion, contact the next Eligible Bidder entitled to be notified that it is the Provisional Winning Bidder, in writing, to enquire if that Eligible Bidder wishes to complete the purchase of the Subsidiary at the Highest Bid Price. In such circumstances the relevant provisions of section 11 shall determine the manner of progressing the sale of the Subsidiary.

#### **14. Execution of the Share Sale Agreement**

- 14.1 The Share Sale Agreement and any related documentation shall be signed by an authorised representative of the Agency and an authorised representative of the Provisional Winning Bidder respectively. The Agency may require the authorised representative of the Provisional Winning Bidder to provide the Agency with evidence of the authority of the authorised representative of the Provisional Winning Bidder to sign the Share Sale Agreement and related documentation on behalf of the Provisional Winning Bidder.
- 14.2 For the avoidance of doubt, the Share Sale Agreement and any related documents shall not be signed between the Agency (on behalf of the SOE) and the Provisional Winning Bidder until the total amount of the Highest Bid Price plus the Initial Charter Capital has been paid to the Agency, to the satisfaction of the Agency.

#### **15. Postponement or Cancellation of Tenders**

- 15.1 The Board may postpone or cancel the Tender at any time and for any reason in its sole discretion.
- 15.2 Without limiting the generality of section 15.1 and without prejudice to any of other causes of postponement or cancellation of the Tender set out in these Rules of Tender, the Board may take a decision to direct the Agency to postpone or cancel the Tender, in the following circumstances:



- (a) In the event that no Bids are received that satisfy the criteria and conditions set out in these Rules of Tender;
- (b) If fewer than three Potential Bidders are registered as Eligible Bidders pursuant to section 6 of these Rules of Tender;
- (c) If fewer than three Bids are submitted by Eligible Bidders during the Bid Submission Period;
- (d) If, in the Board's judgment, the Highest Bid Price bears no rational relation to the perceived value of the Tendered Items and the Subsidiary. In such a case, the Board has the additional discretion to postpone the determination of the Provisional Winning Bidder until a later date.
- (e) If the Agency receives indications of or suspects any collusion amongst Bidders, the use of coercion or s by a Bidder or Bidders to dissuade the participation in any aspect of the Tender by other Bidders or to affect the contents of another Bidder's Bid, or any illegal or improper activity performed in connection with the Tender by any person.

15.3 Where the Tender is cancelled, for whatever reason:

- (a) The Agency shall notify all Eligible Bidders, in writing, of the cancellation;
- (b) The Agency shall not be held responsible for any costs or liabilities incurred by any Bidder or third parties;
- (c) All Bid Deposits received and any other funds received by the Agency (except for the Bid Submission Fees) shall be returned by the Agency within 15 Business Days of the date of cancellation **PROVIDED** that Bid Deposits will not be returned by the Agency to any Bidder that has forfeited their Bid Deposit in a manner provided under these Rules of Tender.

## 16. Agency's Reservation of Rights

### 16.1 *Amendments to Time Limits*

The Agency may at the Agency's absolute and sole discretion extend or amend any time limit referred to in these Rules of Tender, where the Agency believes that additional time is reasonably necessary for the purposes of successfully completing the sale of the Subsidiary or as a result of some other circumstances resulting in delay.

### 16.2 *Amendments to Tender Requirements*

The Agency reserves the right to amend, modify, or terminate any of the procedures set out in these Rules of Tender at any time during the Tender, without prior notice and at no cost or liability to the Agency. Amendments to these Rules of Tender shall be issued in writing by the Agency and shall be made public and a copy of the amended Rules of Tender shall be sent to each Eligible Bidder.

### 16.3 *Rejection of Winning Bidder*

The Agency may reject a Provisional Winning Bidder's Bid if the Agency becomes aware that information contained in the Provisional Winning Bidder's application for registration as an Eligible Bidder or any of the information in Provisional Winning Bidder's Bid is false. In such a case the Agency will not be required to progress the sale of the Subsidiary with the Provisional Winning Bidder and the Agency will cease the negotiation of the Share Sale Agreement with the Provisional Winning Bidder. Additionally, the Provisional Winning Bidder will forfeit its Bid Deposit and the Agency shall then be entitled to contact the next Eligible Bidder entitled to be notified that it is the Provisional Winning Bidder, in writing, to enquire if that Eligible Bidder wishes to complete the purchase of the Subsidiary at the Highest Bid Price. In such circumstances the relevant provisions of section 11 shall determine the manner of accomplishing the sale of the Subsidiary.

### 16.4 *Contractual Relationship*

- (a) The Rules of Tender are not intended to constitute a memorandum of agreement between the Agency and Bidders. Accordingly, no contract shall be deemed to exist between the Agency and a Bidder due only to the participation of such a Bidder in any aspect of the Tender.
- (b) Until the entry into force of an executed Share Sale Agreement, there shall be no contract in effect between the Agency and the Provisional Winning Bidder and neither the Agency nor the SOE shall be bound in any way to the Provisional Winning Bidder. Further, the terms of the Information Memorandum or other Tender Documents shall not be construed as an offer.

### 16.5 *Disclaimer*

To the extent permitted by Applicable Law, the Agency and its representatives expressly disclaim:

- (a) any and all liability for representations, warranties or statements contained in any written material (including without limitation the Information Memorandum and the contents of any data room) furnished or in any information orally transmitted to a Bidder; and
- (b) any representations or warranties implied by any law.

## 16.6 *Language*

These Rules of Tender have been prepared in Albanian , Serbian and English language as well.

## 16.7 *Possibilities for annulment of the sales contract*

Notwithstanding article 10.5 of UNMIK Regulation No. 2002/13 on establishment of the Special Chamber of Supreme Court of Kosovo or other provisions of the applicable law, should it be determined that (a) the funds used by a Provisional Winning Bidder to purchase the new subject derived directly or indirectly from illegal activity; or (b) the Buyer was involved in collusion during the Tender or any other violation of the Rules of Tender, then the Share Sale Agreement shall be annulled by the Agency.

## **17. Dispute Resolution**

17.1 Subject to section 17.2 below, the decisions of the Agency arising under these Rules of Tender or the Tender generally shall be final and shall not be appealed to any court or other organ. Bidders shall not be entitled to file a claim in any court within or outside Kosovo, either to reverse a decision of the Agency or for compensation for costs or liabilities arising as a result of a decision of the Agency, so far as allowed by Applicable Law.

17.2 Notwithstanding the preceding clause, the parties acknowledge and agree that the Special Chamber of the Supreme Court of Kosovo shall have exclusive and final jurisdiction over the Agency.

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**ANNEX A**

**“TENDER SCHEDULE”**

**Summary Tender Timetable**

<i>Date</i>	<i>From</i>	<i>To</i>	<i>Duration</i>
<b>Publication of Tender Notice Due Diligence Visits</b>			<b>30 days</b>
<b>Submission of Bids</b>	10:00	12:00	
<b>Validation/ Evaluation of Bids and identification of the Highest Bid Price</b>	13:00	16:00 - 17:00	3 - 4 hours
<b>Informing Eligible Bidders of the results of the Tender</b>			3 days
<b>Negotiation of the Share Sale Agreement with the Provisional Winning Bidder Transfer of the Tendered Items to Subsidiary/Signing of Share Purchase Agreement</b>			<b>90 days</b>

ANNEX B

**“Bid Price that Provisional Winning Bidder will need to pay to the Agency”**

Full name of the Eligible Bidder: .....

Bidder Eligibility Registration Number: .....

Name of the Subsidiary: New Co.....L.L.C.

Tender no: .....

**BID PRICE – ENTER THE BID PRICE YOU INTEND TO PAY FOR THE SUBSIDIARY IN FIGURES**

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

IN WORDS

[ EUROS ]

**NOTE 1: IN THE EVENT OF ANY DISCREPANCY BETWEEN THE FIGURES CONTAINED IN THE TABLE ABOVE AND THE AMOUNT STATED ABOVE IN WORDS, THE LATTER (THE AMOUNT IN WORDS) WILL PREVAIL AND WILL BE READ AND TREATED AS THE OFFERED BID PRICE. IN ANY CASE WHERE THE AMOUNT DESCRIBED BY FIGURES AND WORDS ARE BOTH NOT LEGIBLE, THE BIDDER’S BID WILL BE DISQUALIFIED.**

**NOTE 2: POTENTIAL BIDDERS SHOULD BE AWARE THAT IN ADDITION TO THE BID PRICE THEY ARE OBLIGED TO PAY THE ADDITIONAL AMOUNT OF EURO 1.250,00 BEING THE AMOUNT OF INITIAL CHARTER CAPITAL FOR THE ESTABLISHMENT OF THE SUBSIDIARY FOR WHICH THE AGENCY MUST BE REIMBURSED**

.....  
Signature for and on behalf of the Eligible Bidder

This Signature also confirms that the Eligible Bidder understands the Notes above and agrees to be bound by the statements made therein.

Name & Surname: .....

Date: .....

**ANNEX C**

**“BID SUBMISSION FORM”**

**HIS LETTER MUST BE INCLUDED IN A SEPARATE ENVELOPE FROM THE BID PRICE**

**(IN ACCORDANCE WITH SECTION 8.3(a)(i) OF THESE RULES OF TENDER)**

**To:** Privatization Agency of Kosovo  
 Ilir Konushevcı No. 8  
 Pristina  
 Kosovo

Dear Sirs,

**Full name of the Eligible Bidder: .....**

**Bidder Eligibility Registration Number: .....**

**Name of Newco/the Subsidiary: .....**

**Tender no: .....**

All capitalised terms used in this form shall have the same defined meaning as in the Rules of Tender, unless otherwise defined. The Eligible Bidder confirms that it is bidding for the Subsidiary.

**Enclosed:**

<b><u>DOCUMENT</u></b>	<b><u>ENCLOSED – YES OR NO?</u></b>
Copy of the eligibility registration form	
Original bank letter from a reputable bank (and not being a bank registered in a country which is on the ‘blacklist’ of the Financial Action Task Force (FATF)) confirming that the Eligible Bidder will have access to sufficient funds, during the entire Tender period, to pay the total of its Bid Price and the Initial Charter Capital. Such bank letter does not state the amount of the Eligible Bidder’s Bid Price	
Proof that the bid submission fee has been transferred to the PAK designated account	

Proof that the bid deposit (referred to in the Rules of Tender) has been transferred to the account designated by the Agency	
--	--

Original letter signed properly or on behalf of the bidder stating that Bidder agrees to be liable for obligations from Annex E and F of Rules of Tender herein and Sale Contract.	
--	--

The Eligible Bidder (named above), by submitting this Bid, acknowledges and confirms that:

- it is bound by the terms and conditions set out in the Rules of Tender
- it is not a Prohibited Bidder for the purposes of the Rules of Tender
- it has received and read the Information Memorandum and a draft copy of the Share Sale Agreement
- it was informed about the Data Room containing important information and documentation, including a document called “Certain Legal and Other Risks”, in respect of the SOE, the Tendered Items, and the Subsidiary, which information might affect the Eligible Bidder’s decision to submit a Bid and/or its Bid Price
- it was given the opportunity to visit the Data Room and either did visit the Data Room or knowingly took the risk not to visit the Data Room
- if it is notified by the Agency that it is the Provisional Wining Bidder the Share Sale Agreement use to complete the sale of the Subsidiary shall be substantially in the form and content of the draft Share Sale Agreement provided with the Tender Documents
- the Agency shall only complete the sale of the Subsidiary at the Highest Bid Price

.....

**Signature**  
**For and on behalf of the Eligible Bidder**

**Name:** .....

**Date:** .....

## ANNEX D

### “FORM OF BANK LETTER”

- **THIS LETTER MUST BE INCLUDED IN A SEPARATE ENVELOPE FROM THE BID PRICE (IN ACCORDANCE WITH SECTION 8.3(a)(iii) OF THESE RULES OF TENDER)**
- **THIS LETTER MUST NOT STATE THE AMOUNT OF THE ELIGIBLE BIDDER’S BID PRICE**

**[TO BE TYPED ON BANK LETTERHEAD]**

To: Privatization Agency of Kosovo  
Ilir Konushevci No. 8  
Pristina  
Kosovo

From: *[insert name of Bank]*

**Re: Bid by *[insert name of the Eligible Bidder]* for NewCo “Famipa” L.L.C/ Wave 49.**

[All capitalised terms used in this letter shall have the same defined meaning as in the Rules of Tender for NewCo “Famipa” L.L.C., unless otherwise defined]

We note that *[insert name of Eligible Bidder]* is a client of our bank. We have discussed *[insert name of Eligible Bidder]*’s intention to submit a bid to purchase NewCo “Famipa” L.L.C., pursuant to PAK bid tender number *[insert PAK bid tender number]*.

After reviewing *[insert name of Eligible Bidder]*’s funds deposited in its bank accounts at our bank and his other sources of funds, we believe that he/it will have access to sufficient funds to pay his Bid Price and related costs (including, but not limited to, €1,250 in respect of the Initial Charter Capital) during the term of the Tender, in accordance with the requirements and deadlines set out in the applicable Rules of Tender for NewCo “Famipa” L.L.C.

We confirm that we are a bank registered in *[insert country]* and which is not on the ‘blacklist’ of the Financial Action Task Force (FATF)).



Yours sincerely,  
.....

**Name of signatory:**.....  
**Title of Signatory:** .....  
**Name of bank:** .....  
**Date:** .....

**ANNEX E**

**TERMS OF SPIN OFF BID**

**A. Contractual Obligations**

Below stated obligations and mechanisms for fulfilling these obligations, included in Rules of Tender herein and consequently in Sale Contract are binding to the Buyers of NewCo “Famipa” L.L.C;

- **The Bidder or Prospective Buyer of NewCo “Famipa” L.L.C. is obliged to maintain current production and metal processing activity (original manufacturing of the SOE) for future three (3) years and this activity must proceed immediately after signing the sale contract.**
- **Equipment and machinery of NewCo must remain as is thus the buyer shall not remove and dislocate any equipment or existing machinery for future three (3) years.**

In case of any default by the Prospective Buyer as to obligations stipulated in Rules of Tender herein and Sale Contract, Agency’s Board of Directors or its legal successor, may execute contractual penalties which shall include 30% of the sale price of NewCo “Famipa” L.L.C.

Every Eligible Bidder must submit the offer which includes: price of purchase; and a letter properly signed by and on behalf of the bidder who comprehends contractual obligations regarding operations of NewCo.

Details regarding these obligations and execution mechanisms shall be presented in the Sale Contract.

## **ANNEX F**

### **B. MONITORING OF FULFILLMENT OF CONTRACTUAL OBLIGATIONS**

Fulfilment of the above stated obligations shall be monitored by the Privatisation Agency of Kosovo (PAK) or its legal successor, as in following:

- The Buyer is obliged to report in written to the Agency or its legal successor, for the continuance and maintenance of same business activity, every six (6) months for next three (3) years from the day of stepping into Sale Contract.
- During monitoring period, the Agency or its legal successor, in special circumstances, has the right to meetings and irregular visits to Privatized enterprise, with prior notice of 24 hours. The purpose of the meetings and visits is verification of fulfilment of obligations and contractual terms.

Verification of situation in general by the Agency or its legal successor, does not exclude the verification possibility of the situation by other public bodies of Republic of Kosovo authorized by law.

In case of any default as to the obligations stipulated in these Rules of Tender and Sale Contract by the Buyer, Agency's Board of Directors or its legal successor, may execute contractual penalties which shall include 30% of the sale price of the NewCo.

