

PUBLIC PRIVATE PARTNERSHIP AND CONCESSIONS IN ALBANIA

CONCESSIONS AGENCY OF ALBANIA - ATRAKO



Shkelqim Kerluku
Chairman of ATRAKO

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The Concessions Agency of Albania - ATRAKO

ATRAKO, is established by Decision of the Council of Ministers No. 150, dated 22.03.2007, as a legal entity under the authority of the minister responsible for the economy, enjoying the following competencies :

- On Strategic Level - to assist in the promotion of concessions in the Republic of Albania in a transparent manner and to ensure an equal and professional approach to concessions by the Contracting Authorities;
- On Project Level - to assist and advice the Contracting Authorities in: (i) the consideration and evaluation of offers for concession projects, both solicited and unsolicited bids, particularly in relation to their profitability and feasibility; (ii) drafting of the request for offers, pre-bidding documents and other acts related to the bid (including also the Concessionary Contracts); (iii) the evaluation of the offers; (iv) the declaration of the best offer; (v) the negotiations and the signing of the Concession Contract;



The Concessions Agency of Albania

- to promote the implementation of the best practices in the application of the procedures and rules of Concessions, particularly with regard to the procedure of unsolicited offers.
- to provide, upon the request of the Contracting Authorities, expertise for monitoring concession contracts and advice for such issues such as amendments, supplements and refinancing of such contracts;
- to keep a data base for the concession projects under consideration, evaluation or implementation.
- to take part and assist with the drafting and unification of standard documents (including contracts), as well as with the methodologies for comparing concession projects.
- to organize training for the staff engaged in the implementation of concession projects.
- to organize consultations in the concession field between the private sector and the important actors in this field.



Implementation Steps on Concessions



| Activities | Activities | Activities | Activities |
|--|---|---|--|
| <ul style="list-style-type: none">a. Identification & Definitionb. Pre-feasibility Studyc. Socio-Economic CBAd. Mapping of Financial Sourcese. Public Affordability Analysis | <ul style="list-style-type: none">a. Project organizationb. Business Casec. Public Private Comparator | <ul style="list-style-type: none">a. Development of procurement planb. Preparation of key procurement documentsc. Evaluation and selection of bidsd. Value for money measurement(PSC) | <ul style="list-style-type: none">a. Management of contracts and relationshipsb. Management of Public Finance implicationsc. Monitor and measure performanced. Risk managemente. Manage and resolve disputes |

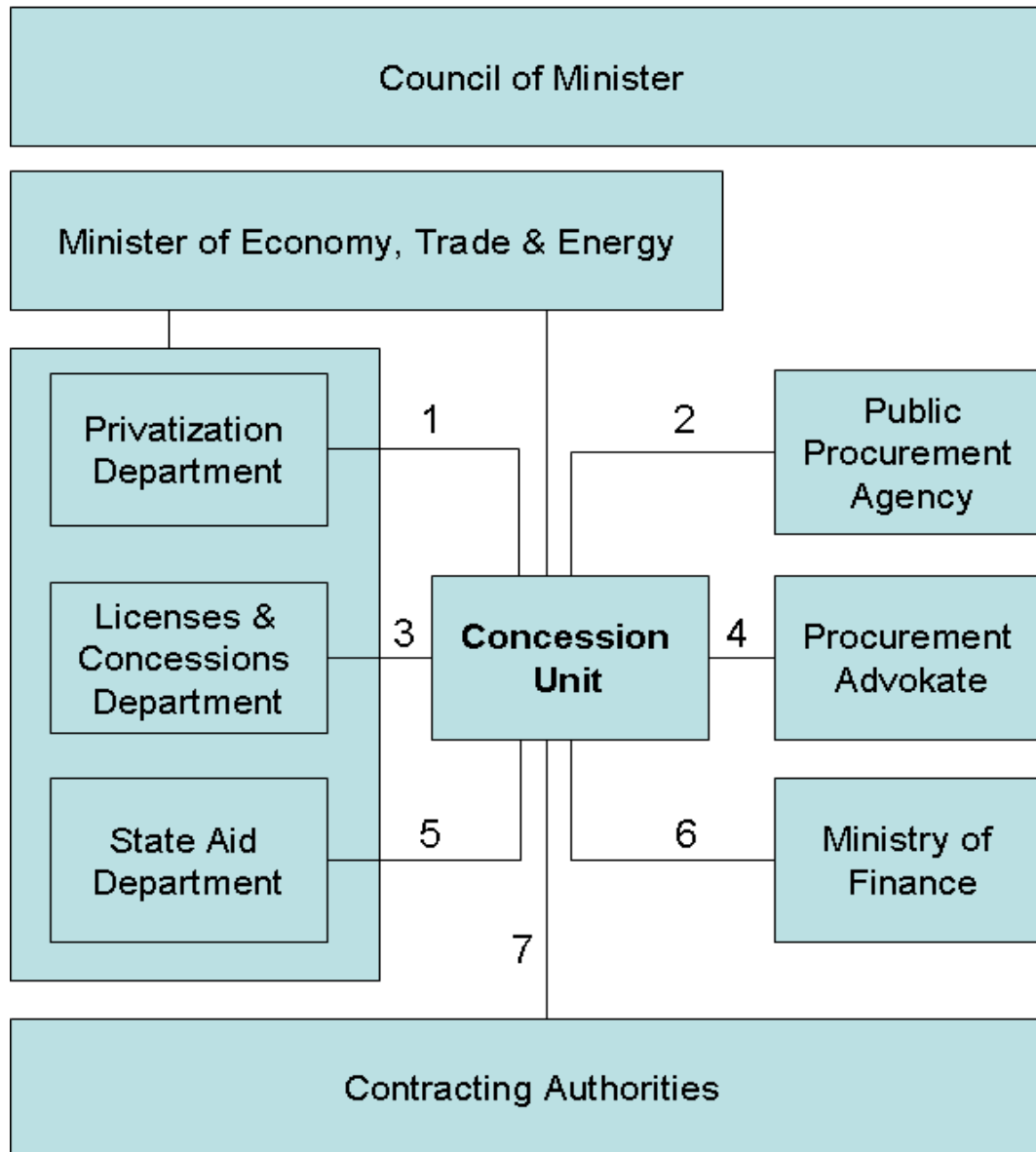


Expectations from the Legislative development

- Any concession project is subject to competitive bidding procedures that implies a more efficient construction of the project by the private sector; additional revenue generation by the private sector; creative and innovative solutions to technical problems in the project; faster delivery of the project; life-cycle optimization of the project(integration of design, build, finance and maintenance).
- Unsolicited proposals coming from the private sector are evaluated in conformity with the public interest, sectorial strategic plans and the best value for money principles.
- Exemptions from the above rules are applied on national security projects or for short period of time in case an actual concession contract has been early terminated, by the Contracting Authority.



Institutional Relations of ATRAKO



Drafting of Standard Concession Agreements

Drafting of Standard Concession Agreements is regulated by:

- In general, in accordance with the entire Albanian legislation in force;
- In specific, in accordance with the respective laws, decisions or any other legal act such as Law “On Concessions”, DCM No. 27, dated 19.01.2007 “On the adoption of the rules for the evaluation and granting of concessions”, laws on the protection of environment, use of water , on electricity, planning, property, Albanian standards , implementation of works, licensing, etc.
- Article 27 of the Law “On Concessions” make some references on the structure of a Standard Concession Agreement .



Drafting of Standard Concession Agreements

Such structure is focused in two main substructures:

- First: requirements of the contracting authority as specified in the Standard Bidding Procedure Documents and the offer of the Bidder;
- Second: rights and obligations of the contracting parties, penalties applied in case of non-fulfillment of obligations, termination and its effects, governing law, etc.

Short description of the Structure:

- The nature, scope of works and contract duration;
- The assistance on granting of licences and permits;
- Any requirements relating to the Project Company;
- The ownership of assets related to the Concession Project;
- Concession fee;



Drafting of Standard Concession Agreements

- Procedures for the review and approval of engineering designs, construction plans and specifications by the Contracting Authority;
- The Contracting Authority or other public authority's right to monitor the works to be performed and services to be provided by the Concessionaire;
- Any restrictions or conditions applicable to the assignment of rights and obligations of the Concessionaire under the Concession Contract;
- Any restrictions or conditions related to the transfer of a controlling interest in the Concessionaire;
- Definition and consequence of force majeure, change in law and other changes in circumstances (including any right of the parties to seek compensation or revision of Concession Contract);
- Contingent liabilities, if any, of the relevant public authorities or Contracting Authority;



Drafting of Standard Concession Agreements

- Circumstances under which the Contracting Authority has the right to temporarily take over the operation of the facility for the purpose of ensuring the effective and uninterrupted delivery of the service in the event of serious failure by the Concessionaire to perform its obligations and to rectify the breach;
- Any rights of the Contracting Authority to review and approve, major contracts to be entered into by the Concessionaire, in particular with the Concessionaire's own shareholders or other affiliated persons;
- Guarantees of performance to be provided and insurance policies to be maintained by the Concessionaire in connection with the implementation of the Concession;
- Remedies available in the event of default of either party;
- Conditions and procedure for amendment and/or termination; rights and obligations of the parties upon its expiry or termination (including mechanism of transfer of assets, technology, compensation, training and support services to be provided by the Concessionaire);



Drafting of Standard Concession Agreements

- The rights and obligations of the parties with respect to confidential information.
- Step in Rights



Drafting of Standard Concession Agreements

The Step in Rights concept:

The right of lenders to assume sole or principal responsibility for carrying out all or part of the project's contractual responsibilities or to make arrangements for carrying them out.

Step-in rights are designed to ensure continuity of the project and its ability to operate following a default by the Concessionaire.

Such rights may be called only by the lenders and is used for a limited period of time (up to 12 months).



Other Facilities

- The right of the Concessionaire to demand by the relevant authority the execution of a PPA for SHPP up to a capacity of 15 MW;
- Establishment of a special agency under the concept of “one stop shop” for speeding up the process of applications and granting of any authorization, license and any necessary permit required by legislation in force for the project implementation;
- Establishment of a special agency responsible with evaluation of any appeal procedure coming from bidders during the competitive process.



THANK YOU FOR YOUR ATTENTION!

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