

## REGULATION ON SUBCONCESSIONS

Sagias Law Firm

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## **PREAMBLE**

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The Concession Agreement dated 24/6/2016 in relation to the Use and Operation of Designated Areas and Assets, which was concluded between the Hellenic Republic and the Company (hereinafter: the Concession Agreement) and also the ratification law thereof (Law 4404/2016, Gov. Gazette A' 126/8.7.2016) include rules and obligations of the Company with regard to the award, conclusion and execution of subconcession contracts. This Regulation constitutes specialised provisions of such rules and obligations and aims at providing a stable framework for the PPA and the contracting third parties as to the regulated sectors herein.

The Managing Director of PPA S.A (hereinafter: the Company) taking the above into consideration and, in particular, the provisions of article 8 of Law 4404/2016 (Gov. Gazette A' 126/8.7.2016) and article 9 and 12 of the Concession Agreement (hereinafter: «CA») between the Hellenic Republic and the Company approved by virtue of decision nr. 42/10.11.2016 following a relevant authorisation of the Board of Directors of the Company (179/27.10.2016) this Regulation on Subconcessions, which for the sake of completeness regulates in its entirety the matter of subconcessions, consists of 13 articles in total and reads as follows:

## **ARTICLE 1 - DEFINITIONS**

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- 1.1. Subconcession, for the purposes of applying this Regulation, is intended to be the concession by the Company to third parties of the exclusive right of possession, use, management, maintenance and exploitation of Assets of the Concession in such a way that the autonomous operation of parts of the Port be transferred to third parties in accordance with the specific terms and conditions of the contract each time concluded. Subconcessions are not intended to include, neither fall within this Regulation, cases of transfer to third parties of individual rights on the basis of specific commercial cooperation agreements (indicatively: lease, contract for works, etc.) concerning facilitation of operation of parts of the Port.
- 1.2. Concessions of minor importance, for the purposes of applying this Regulation, are intended to be the concessions to third parties for the use of any space (either within or outside the buildings) or for the provision of services within the Concession Designated Area (*«the Perimeter of Concession»*), including, indicatively, the space within the Shipyards in the Ship Repair Zone of Perama. Subconcessions of minor importance are not intended to be the Defined Subconcessions concerning (I) the operation in their entirety or substantially in their entirety of the terminal stations which are set forth in article 3.3 of the Concession Agreement or (ii) any of the services which are set forth in article 11.1 and 11.2 of the Concession Agreement, whereby the cost incurred by the Company for the provision of said services exceeded the amount of EUR1.000.000,00 per year.
- 1.3. The term Concession Designated Area (*«the Perimeter of Concession»*) has the meaning as attributed per article 3.5(a) of the Concession Agreement.
- 1.4. The term Defined Subconcessions has the meaning as attributed per article 3.6 of the Concession Agreement.

## **ARTICLE 2 – GENERAL AWARD PRINCIPLES**

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- 2.1 The contracts, which fall within the ambit of applying this Regulation, are awarded in accordance with the rules and procedures thereof as well as the terms of the Call for Tender each time, and are executed in accordance with the terms of the Contract, which is signed each time, as well as in accordance with the provisions of the legislation in force governing the contract.
- 2.2 In the award of contracts the Company must abide by the principles of transparency, publicity, equal treatment and prohibition of discrimination.
- 2.3 The Company takes care so that in the award of contracts free competition is not distorted.

### **ARTICLE 3 – INCUMBENT BODIES**

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- 3.1 The Contracting Authority is always the Company.
- 3.2 For all decisions concerning the award and execution of subconcession contracts the Managing Director is the incumbent person, provided that the financial subject matter of the contract falls within the limits of the latter, together with the Director of Administrative Operation and, in case that the concession falls within the competence of another Directorate in accordance with the Regulation of Internal Organisation and Operation, in addition to the Director of such Directorate. If the financial subject matter of the contract exceeds the limits of the power and authority of the Managing Director, the incumbent body is the Board of Directors of the Company or any other body which has the relevant authority in accordance with the applicable provisions in force.
- 3.3 For the award and monitoring the implementation of the contracts which are regulated by this Regulation, a special Committee for the Award and Monitoring of the contract is set up each time by virtue of a decision of the incumbent bodies as per above 3.2. This Committee is responsible for conducting the procedure for the selection of the contracting party as well as for monitoring the implementation of the contract.

### **ARTICLE 4 – PARTICIPATION BOND AND GOOD PERFORMANCE BOND**

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- 4.1 For participating in any stage of the selection and award procedure a participation bond may be required to be submitted. Unless a provision of the Call for Tender sets forth otherwise, the amount of the participation bond is equal to one (1) minimum monthly consideration as per the Call for Tender. The participation bond is forfeited in favour of the Company in case that the selected party refuses to attend the signature of the relevant minutes or the relevant agreement within the time limit set forth.
- 4.2 For the execution of the concession contract a good performance bond is required to be submitted. The good performance bond is issued in favour of the Company for a percentage of 10% of the total contractual value not including VAT, unless a different percentage is stated in the Call for Tender. The term of validity of the bond is set forth in the Call for Tender. With regard to subconcessions of minor importance, in particular, the Call for Tender may set forth that for the execution of the contract a good performance bond is not required to be submitted.
- 4.3 In case that the contract sets forth an obligation of the contracting party for the implementation of investments in the asset under concession upon the execution of the contract, an additional letter of guarantee for the good performance of the investments shall be submitted. The amount of this guarantee, unless a provision of the Call for Tender sets forth otherwise,

is equal to a percentage of 10% of the budgeted cost of the investment not including VAT. This letter of guarantee is returned to the contracting party upon certification of the implementation of the investment.

- 4.4 The bonds of this article are issued exclusively and solely in the form of letters of guarantee by credit or other institutions entitled to issue such letters. The Call for Tender may set forth that in lieu of a letter of guarantee the equivalent amount thereof may be deposited with the Company, which amount bearing no interest shall remain with the Company and shall be returned or forfeited in favour of the Company, in accordance with the specific provisions of the Call for Tender or the Contract.

## **ARTICLE 5 - EXEMPTIONS**

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By exemption, following a recommendation of the Committee as per article 3.3 of this Regulation, it is permitted to directly award a concession without abiding by the procedures of this Regulation and by direct negotiation of the terms and conditions of the contract between the Company and the selected contracting party thereof in the following cases:

- a) In case that, on objective grounds, the concession may not be awarded but to the specific contracting party only.
- b) In short term concessions, the term of which shall not exceed one (1) year.
- c) In case that, following the conduct of the above procedure, it was not possible to conclude the contract for the minimum consideration as set forth in the Call for Tender. In such a case, the consideration to be agreed upon with the contracting party may not be less than the maximum offered in the procedure that preceded but did not lead to the execution of a contract.
- d) In case that, due to emergency owed to extraordinary and unforeseen events outside the sphere of liability of the Company, it is not possible to abide by the ordinary procedure.
- e) In case of concession of any space (either within or outside the buildings) or services and the total estimated annual consideration does not exceed the amount of forty thousand EUR (40.000,00 €).

## **ARTICLE 6 – PUBLICITY OF CALL FOR TENDER**

- 6.1 Except for the explicitly mentioned exemptions as per article 5 of this Regulation and without prejudice to article 8.2 of this Regulation, the concession contracts are awarded following a Call for Tender, which is drafted by the Company and is published in accordance with the terms and conditions of this Regulation.
- 6.2 The Call for Tender constitutes a binding regulatory framework for conducting the procedure and includes at least the following data:
- a) The corporate name, postal address, fax number and electronic mail address of the Company as well as the data of the incumbent employee thereof.
  - b) Exact description of the award procedure.
  - c) Description of the subject matter of the concession.
  - d) The term of the concession as well as any foreseeable extensions thereof. Unless stated otherwise in the Call for Tender, the total term of extension may not exceed the initial term of the contract.
  - e) The causes for an early termination of the contract.
  - f) The minimum consideration which may be offered in the Tender and the currency thereof as well as the method of any readjustment of the consideration during the term of the contract.
  - g) The time limit within which interested parties may request the tender documentation from the Company, the amount which may be required to be paid for granting such documentation and the method of payment thereof.
  - h) The hours during which interested parties may visit the space to be conceded or the area, within which the service to be awarded shall be rendered, so that they may have an individual understanding thereof as well as the respective procedure.
  - i) The time limit within which offers are submitted and the form of submission thereof.
  - j) The required guarantees for participation, the type and the amount of such guarantees, the term of validity thereof as well as the timing for the submission thereof.
  - k) Possibly, the causes for exclusion, the requirements for participation concerning the personal status of the interested parties, the required economic and financial adequacy, the required technical and professional

capabilities as well as evidence to prove that either such respective requirements occur or impediments to their participation occur.

l) The content of the offers which is required for the acceptance thereof and, possibly, the evaluation form thereof.

m) The term of validity of the offers and the extensions thereof.

n) The incumbent body for conducting the tender and for monitoring the implementation of the contract.

o) If the case may be, the obligations of the contracting party for implementing investments in the subject matter of the concession, for insurance, guarding, repair and maintenance thereof or of any annexes thereto.

p) If the case may be, the permits which the contracting party is obliged to obtain and maintain for the commencement and the continuation of use or for rendering the service to be conceded.

q) Any other term at the discretion of the Company.

r) Possibly, a draft of the contract to be executed.

6.3 The Call for Tender is posted on the electronic page (website) of the company. At the discretion of the incumbent body, when it is deemed necessary, in addition to that, publication in a newspaper or other media may be decided. The Call for Tender remains posted as above for twenty (20) days or as specifically set forth in the relevant decision of the incumbent body of the Company. In exceptional cases, this time limit may be shortened into half (10 days).

6.4 The Call for Tender is not regarded as an invitation for concluding a contract.

6.5 The Company has the right at any stage of the procedure until the conclusion of the contract to suspend, postpone, decide on repeating the procedure or cancel the contract, always following relevant notification of the parties who participate in the procedure. The Company takes every possible effort to avoid causing any damage to the participants from the decision thereof on suspension, postponement, repetition or cancelation of the procedure.

## **ARTICLE 7 – PROCEDURE FOR THE SELECTION OF A CONTRACTING PARTY**

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7.1 Stage A' - Preselection: Following the procedure for the publicity of the Call for Tender as per article 6, interested parties, who have the required qualifications and meet the relevant conditions, submit within the time

limit set forth by the Call for Tender the tender participation dossier, which, as per the specific provisions of the Call for Tender, contains detailed data for the certification of the technical/professional capabilities of the interested party, the financial adequacy thereof as well as the general experience thereof in implementing similar contracts to the one to be awarded in order to substantiate the adequacy thereof as to the proper implementation of the contract to be awarded.

- 7.2 Stage B' - Submission of supporting dossier and financial offer: Out of the total of the dossiers submitted, the Company may without any numerical restriction, unless stated otherwise in the Call for Tender, invite the participants of its choice to submit a dossier supporting their participation, from which the following shall derive more specifically: the suitability thereof for the proper implementation of the contract to be awarded and the financial adequacy thereof for the implementation of the contract to be awarded as well as any other data required each time at the discretion of the Company. In addition, the financial offer is submitted in accordance with the provisions set forth in the Call for Tender.
- 7.3 Stage C' - Negotiation Procedure: The Company invites one or more participants of its choice to negotiation and negotiates the terms of the contract with them. In case it becomes necessary, the Company repeats the negotiation procedure as many times as deemed necessary.
- 7.4 Following completion of the above procedure, the Company may decide on the award of the contract on the basis of the criteria set forth in the Call for Tender depending on the nature of the contract to be awarded.

## **ARTICLE 8 – SPECIAL PROCEDURE FOR THE AWARD OF SUBCONCESSIONS OF MINOR IMPORTANCE**

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In particular, award of subconcessions of minor importance is conducted as follows:

- 8.1 Without prejudice to article 5 par. (e) of this Regulation, with regard to concessions of any space the Company publishes an invitation for the submission of offers abiding by the publicity rules as set forth in article 6 of this Regulation. Within a reasonable time period after the lapse of the time for the submission of offers, the Company selects the Subconcessionaire upon the criterion of the highest financial consideration offered.
- 8.2 Without prejudice to article 5 par. (e), with regard to concessions for services the financial subject matter of which does not exceed the amount of one hundred thousand EUR (100.000,00 €), suitable persons, who are selected by the Company to this purpose, are invited to negotiations. An invitation to submit an offer is sent out to such persons. The number of such persons invited to participate must be adequate, so that the

conditions of actual competition are met. In no case may the persons invited to participate be less than three (3), unless there are not so many suitable persons. The Company conducts negotiations with such persons and decides on the award of the contract on the basis of the criteria set forth in the Call for Tender depending on the specific requirements of the contract under concession.

- 8.3 With regard to concessions for services the financial subject matter of which exceeds the amount of one hundred thousand EUR (100.000,00 €), the Committee as per article 3.3 issues an Invitation for Expression of Interest abiding by the publicity rules as set forth in article 6 of this Regulation. As to any other case, the provisions of article 7 of this Regulation apply *mutatis mutandis*.

## **ARTICLE 9 – EXECUTION, TERMINATION AND RENEWAL OF THE CONTRACT**

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- 9.1 Following the award announcement, a contract is concluded in writing with the contracting party. If a draft contract has been annexed to the Call for Tender and provided that the Call for Tender does not state otherwise, the contract which is signed may not deviate significantly from the draft contract. In any case the text of the signed contract prevails over any other text, such as, indicatively, the offer, the Call for Tender or the award decision, in case that there are contradictions among the texts.
- 9.2 With regard to assets which have been conceded to the Company by virtue of the Concession Agreement, concession thereof to third parties is subject to any and all terms and restrictions which are set forth in the Concession Agreement. Breach of these terms constitutes always significant cause for termination of the contract on the part of the Company.
- 9.3 The Committee as per article 3.3 of this Regulation (or the members thereof who have been especially nominated to this purpose) monitor throughout the entire term of the contract the implementation of the contract and may give instructions/mandates either in writing or verbally for the proper implementation of the contract. By these instructions/mandates the scope of the contract may not be amended or extended.
- 9.4 The contract is terminated either by notice of termination by anyone of the contracting parties, abiding by the provisions of the contract and the legislation in force, or upon the lapse of the term of the contract.
- 9.5 By virtue of a decision of the Company, the concession contract may be extended, in case that there are objective grounds which justify such extension or this extension is imposed for securing the interests of the Company. The extension is granted following a relevant request by the

Subconcessionaire, which is submitted within reasonable time prior to the termination of the initial contract. The term of extension may not exceed the term of the initial contract.

#### **ARTICLE 10 - APPLICABLE LAW**

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This Regulation is governed by the Concession Agreement and the ratification law thereof (Law 4404/2016, Gov. Gazette A' 126/8.7.2016) and any other applicable legislation in force.

#### **ARTICLE 11 – COMPETENT COURTS**

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- 11.1 Disputes arising between the Company and the contracting parties thereof in relation to conclusion, interpretation of terms and conditions, implementation and termination of subconcessions contracts, shall be adjudicated by the Courts of Piraeus as per the ordinary procedure, unless the Contract sets forth the possibility of submission of such disputes before arbitration.
- 11.2 More specifically, disputes arising between the Company and the contracting parties thereof in relation to conclusion, interpretation of terms and conditions, implementation and termination of Subconcessions of Minor Importance, shall be adjudicated by the One-Member Court of Piraeus in accordance with the special procedure as per articles 615 – 620 of the Code of Civil Procedure, unless the Contract sets forth the possibility of submission of such disputes before arbitration.

#### **ARTICLE 12 – PUBLICITY OF REGULATION**

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This Regulation and any future amendment thereof is published within reasonable time following the approval thereof on the website of the Company and remains accessible at a conspicuous and easily recognisable post.

#### **ARTICLE 13 - ENFORCEMENT**

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This Regulation takes effect on the day of the approval thereof by the incumbent body of the Company.