

**PROJECT: „Overview of European legislation, experience and best practices of old and new EU member states and analysis of best European practices for PPP in a municipality of EU member country. "**

**Project "Establishment and strenghtening of a successful mechanism for public- private partnerships in Burgas Municipality and the Southeast Planning Region”**

**Contract №: 93-00-315 (2)/ 24.06.2009.**

**The project is financed form European social fund and the budget of Republic of Bulgaria**



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**REPORT № 2**

**In connection with the implementation of Activity 2: Study of the experience and practice of EU member states in the implementation of PPP projects in the area of urban and technical infrastructure**

**As part of activity: Overview of European legislation, experience and best practices of old and new EU member states and analysis of best European practices for PPP in the municipality of EU member country. " part of project Project "Establishment and strenghtening of a successful mechanism for public- private partnerships in Burgas Municipality and the Southeast Planning Region”**

**Financed from Operational programme “Administrative capacity”**

**Contract №: A08-14-38-C/10.02.2009**

Prepared by: International and Ibero American Foundation for Administration and Public Policies (FIIAPP), contract № 826/9.07.1998 г. in Protocol and under № 398 according to the description of the Register of the Foundations of the Department of the Ministry of education and science of Kingdom of Spain, represented by Francisco Javier Navarro Baygori, Manager of FIIAPP

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## LIST OF ABBREVIATIONS

<b>SA</b>	STATE AGENCY
<b>GG</b>	GOVERNMENT GAZETTE
<b>SS</b>	STATE SECRETARIATE FOR PUBLIC ADMINISTRATION
<b>SPE</b>	SPECIAL PURPOSE ENTITIES (SPV)
<b>EC</b>	EUROPEAN COMMISSION
<b>EC</b>	EUROPEAN COMMUNITY
<b>EP</b>	EUROPEAN PARLIAMENT
<b>EU</b>	EUROPEAN UNION
<b>ESF</b>	EUROPEAN SOCIAL FUND
<b>AA</b>	ADMINISTRATION ACT
<b>FR</b>	FINAL REPORT
<b>CSL</b>	CIVIL SERVICE LAW
<b>PIU</b>	PROJECT IMPLEMENTATION UNIT
<b>EAMA</b>	EXECUTIVE AGENCY” MARITIME ADMINISTRATION” OF THE MINISTRY OF TRANSPORT
<b>IPA</b>	INSTITUTE OF PUBLIC ADMINISTRATION
<b>IPPP</b>	INSTITUTIONALIZED PPP
<b>CS</b>	CONCESSIONS
<b>FSC</b>	FINANCIAL SUPERVISION COMMISSION
<b>MID</b>	MINISTRY OF INTERNAL DEVELOPMENT OF SPAIN
<b>MFA</b>	MINISTRY OF FOREIGN AFFAIRS
<b>MI</b>	MINISTRY OF INTERIOR
<b>MSAAR</b>	MINISTRY OF STATE ADMINISTRATION AND ADMINISTRATIVE REFORM
<b>MH</b>	MINISTRY OF HEALTH
<b>MAF</b>	MINISTRY OF AGRICULTURE AND FOOD
<b>MEE</b>	MINISTRY OF ECONOMY AND ENERGY
<b>MES</b>	MINISTRY OF EMERGENCY SITUATIONS
<b>IER</b>	INTERNATIONAL ECONOMIC RELATIONS
<b>MD</b>	MINISTRY OF DEFENCE

<b>MES</b>	MINISTRY OF EDUCATION AND SCIENCE
<b>MEW</b>	MINISTRY OF ENVIRONMENT AND WATER
<b>MPAS</b>	MINISTRY OF PUBLIC ADMINISTRATION OF SPAIN
<b>MRD</b>	MINISTRY OF REGIONAL DEVELOPMENT (AND PUBLIC WORKS)
<b>CM</b>	COUNCIL OF MINISTERS
<b>MT</b>	MINISTRY OF TRANSPORT
<b>MLSP</b>	MINISTRY OF LABOUR AND SOCIAL POLICY
<b>MF</b>	MINISTRY OF FINANCE
<b>NBW</b>	NEW BULGARIAN UNIVERSITY
<b>IM</b>	INITIAL MEETING
<b>OPAC</b>	OPERATIONAL PROGRAMME "ADMINISTRATIVE CAPACITY"
<b>PA</b>	PUBLIC ADMINISTRATION
<b>SC</b>	STANDING COMMITTEE ON PPP
<b>PPP</b>	PUBLIC PRIVATE PARTNERSHIP
<b>RB</b>	REPUBLIC OF BULGARIA
<b>WB</b>	WORLD BANK
<b>CEI</b>	COUNCIL FOR EUROPEAN INTEGRATION
<b>SED</b>	SOCIO ECONOMIC DEVELOPMENT
<b>CCMRIPNI</b>	COUNCIL FOR COORDINATION AND MONITORING THE REALIZATION OF INFRASTRUCTURE PROJECTS OF NATIONAL IMPORTANCE
<b>SF</b>	STRUCTURAL FUNDS
<b>TA</b>	TECHNICAL ASSIGNMENT
<b>TUPFI</b>	TECHNICAL UNIT FOR THE (PROJECT) FINANCING OF ITALY
<b>UNWE</b>	UNIVERSITY OF NATIONAL AND WORLD ECONOMY IN SOFIA
<b>BD</b>	BOARD OF DIRECTORS
<b>PHARE</b>	POLAND AND HUNGARY ASSISTANCE FOR THE RESTRUCTURING OF THE ECONOMY

## **1. Introduction**

Main human right is to live in a good living environment, to have access to quality public services, healthcare, education...1.

Maintaining the surrounding physical environment and sustainable development is a measure of wealth and therefore it is a concern of local authorities. Building local social and technical infrastructure is a factor for standard of living, economic growth, business activity and increase of its competitiveness.

However, local administration has difficulties in maintaining good quality of public services and meeting the increased demand due to budget constraints. For this reason in recent years local administrations have a practice to transfer typical public sector activities (water, sewer, construction of urban social and technical infrastructure ) to business. The intense increase of urbanization and concentration of people in big cities with economic potential is the reason for investing in projects for building and maintaining of technical and social infrastructure, which is impossible without the mobilization of resources from the private sector.

Local authorities have the obligation to invest in local technical and social infrastructure and create economic and administrative conditions. Traditional public sector funding includes

revenue from local taxes, state subsidies and additional resources from the emission of municipal bonds and loans from the banking sector, operations with municipal assets, income from participations etc.

For the municipalities PPP is an alternative for financing public investment projects, ensuring economic efficiency, use of innovative, technology and managerial expertise of the private sector. In terms of administration, however, PPP always causes economic, political and technical issues. An answer to the questions depends on the amount of investment, social consensus, approval of the citizens of the municipality, the management of the contract, allocation of risk and profitability of the project.

The model urban agglomerations and concentration of population in larger municipalities with economic potential, introduces to the state / local government the question for achieving balance in terms of regional development and economic integration between regions and municipalities.

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## 1 Human rights - United Nations Organization (UNO)

The economic and social infrastructures are essential for the economic development and sustainable development of the municipality.

The projects that the municipalities implement through PPP have different economic characteristics.

- infrastructure projects that generate revenue and cover the cost of the initial investment are financially sustainable, for example those in telecommunications, public transport, electrification, sports facilities, parking lots
- social infrastructure projects - schools, hospitals, cultural and historic buildings, water and sewerage system, street lighting, parks. These projects are capital-intensive, the revenue generated i.e profitability in the long term;
- projects that can also be built with the participation of private partners are industrial and technological parks, hotels, sports complexes.

Each project in the public sector is specific, the municipality is a fundamental principle and the contract between it and the private partner is a guarantee for its successful implementation.

To attract business into the public sector it is necessary to be ensured political, legislative and administrative arrangements for PPP and the administration to have economic, financial, technical and legal expertise.

To carry out successful projects, the administration should have the leading role, to formulate the concept of PPP project in technical and social infrastructure, to monitor all stages of management and implementation of PPP. This requires good organizational and managerial capacity, and well-balanced political and managerial risk.

Essential for PPP projects is to maintain and improve the quality of public service, subject of negotiations. This is one of the main conclusions in all the examples in the report and it is an important element of PPP model as a tool for improving the efficiency of public services. It is thus essential to specify the role of citizens as users of such public services as "payer" of the potential socio-economic risks of PPP projects. Therefore, in a well-organized public-private partnership it is good to explore consumers' interests and attitudes.

The challenges for the administration in the preparation and management of projects for technical and social infrastructure, are caused by:

- limit of financial resources;
- the private sector is sceptic for its participation in projects, especially for building and maintaining of social infrastructure;
- indirect benefit from certain public services, such as urban parks, lighting, historical monuments, cultural and entertainment sites;
- assess bearable social cost of public service;
- the choice of an appropriate PPP form for building technical and social infrastructure, as well as funding sources;
- publicity, transparency and accountability of the project.

In some countries due to the specifics of management of investment projects and development of necessary set of documents technical assistance of specialized consulting firms or public agencies is used.

Municipal administration must have a clear idea, feasibility study, assessing the benefits and added value of the project in technical and social infrastructure, which is a prerequisite for success.

The characteristics of PPP, preparation of documentation, funding mechanisms, integration of the management stages and implementation of a PPP project are detailed in the report.

## 2. Overview of the type of projects implemented through PPP.

The role of local government is to increase the economic potential, population welfare and improve business conditions by providing a variety of services: from infrastructure to public utilities.

Through the assignment of public activities of the private sector optimality of financial resources and savings to the scale are achieved, which is a reason for the administration to stimulate investments in the public sector, through seeking private sector partnerships. Many local communities made such programmes. The general opinion is that the private sector "can do it better". Thus, many activities are assigned through tender procedures.

Private companies participate and win auctions for a variety of services such as:

- Building infrastructure – roads, sewage systems, public buildings;
- Provision of services - cleaning, waste collection, recycling of waste;
- Provision of knowledge and experience - especially through „new technologies”;
- Предоставяне на първоначална инвестиция и управление – най-вече в инфраструктурата чрез „изграждане – собственост – управление” (BOO)
- Provision of initial investment and management - especially in infrastructure through Building - Own - Operate "(BOO).

The positive is that in many cases the local administration manages to achieve the desired savings. This is achieved through the reduced costs, a result of the use of knowledge, experience and resources provided by the private sector. Another positive is that through partnerships with the private sector the provision of assets and services that otherwise would not be possible become a fact.

But often these benefits can not be achieved without making investments in other areas such as:

- Increasing customer prices or charging services that were free;
- Increasing costs for monitoring and managing of the contract;
- Legal costs associated with contract disputes;

The big question for local governments is whether there are more benefits than costs. When the answer is negative there are a number of reasons:



- insufficient administrative capacity of local administration in making accurate tender procedures;
- inability of local authorities to assess properly the assigned activities;
- lack of experience in local administration to monitor and manage contracts;
- inability to fully understand the work and services contracts which are assigned
- approval of bids with the lowest price, without understanding the clauses in the contract.

### **3. Best practices**

For the purposes of this study were reviewed and analyzed a number of practices regarding the process of implementation of PPP in the EU member states. The review included countries with traditions in the implementation of PPP such as Spain and Italy as well as countries with less experience – Greece and Czech Republic. Some of the general observations are that in order to achieve good practice, there should be a common legislative framework and not necessarily detailed regulation.

A too detailed statutory regulation would lead to a high degree of limitation and not enough freedom in the process of decision making. On the other hand if there is not enough regulation this would lead to a lack of necessary unification of procedures and the participants would find it difficult to apply the correct principles, a result of the Agreement for the creation of European Community, which are:

- Publicity and transparency;
- Free and loyal competition;
- Equality and prevention of discrimination;

Good legislation is what allows monitoring of different stages during the implementation of PPP without interfering the administrative work and the procedure itself in a way which is appropriate to public interest and the specificity of the subject of PPP contracts.

#### **3.1 Greece:**

In 2006, Greece adopted a law governing public-private partnership. The Act creates a new, favorable regulatory environment and repeals the requirement for parliamentary ratification of concessions within the scope of the new law. Two new committees are formed, responsible for organizing and entrusting concessions:

- **Special Secretariat for PPPs (EGSDIT)** was set up in the Ministry of Economy and Finance. The mission of the Special Secretariat is the provision of support and assistance to the Inter-Ministerial PPP Committee and to public entities. The institution must examine any proposed PPP, to ensure the accuracy of preliminary studies, effective management and implementation of PPP projects. EGSDIT must issue approval (or disapproval) of PPP project within two months from the submission of the application. Upon approval EGSDIT takes the procedure to entrust the project to a private partner. EGSDIT has the right to appoint its own staff and with the permission of DESDIT to appoint independent consultants. At the secretariat's functions is the development of the necessary documents needed for the selection of private partner.
- **The Interministerial Committee of PPPs (DESDIT)**, sets out the government's strategy regarding investment projects in infrastructure, maintenance of public assets and provision of services with the participation of private capital. In DESDIT take part Minister of Finance, Minister of Planning and Regional Development. Head of **DESDIT** is Secretary, appointed by the Prime Minister and Minister of Finance. All projects with a budget up to 200 million euros can be assigned as a PPP without the approval of DESDIT. Projects with a higher budget need DESDIT's approval, but this approval can't be refused without any justified reasons

During the last year the Greek PPP administration goes through an intensive marketing campaign for investment opportunities in the country through PPP. A database of planned projects is created. The value of these projects is more than 3 billion euros in various sectors such as: health, education, justice, tourism, ports, waste collection, public buildings. This activity is supported by the successful experience of Greece in the achievement of PPP projects in the preparation of the Olympic Games in 2004. The greatest share of PPP projects are in the public sector. Greece first started to implement a project for seven fire stations - the project is already in a phase- negotiations with specific bidders.

Another contracts are for the construction and maintenance of prisons, public buildings, sports centers. Another sector that is supported is education - planned and approved are four major

development programs in universities and schools to eliminate the so-called. "Double shift". Reason for this is partly the insufficient land in Athens and Thessaloniki, but this is somewhat overcome by longer procedures.

Another group of projects are connected with the development of health care sector- oncology and pediatric hospital in Thessaloniki, Hospital in Preveza.

Here are some of these projects:

Project name:	<b>Restoration of the old market for fresh fruit and vegetables and implementation of multilevel underground parking Chios Municipality.</b>
Sector:	Municipal PPP project
Contacting authority:	Chios Municipality
Project description:	<p>The project involves the design, financing, construction, maintenance, property management, insurance and commercial exploitation of multi- level underground parking lot of the old market for fruits and vegetables in the Chios Municipality and its restoration. The period of this partnership is 30 years. Contracting authority is the Chios Municipality.</p> <p>The old vegetable market is located within the city centre of Chios. Up to 5 years ago it had been working. Its existence in the center led to problems with pollution and the decline of the area. After its transformation the area is abandoned. The objective of the partnership is the development of the market area and solving the serious traffic problems and lack of parking spaces.</p> <p>The indicative budget of the project is 6. 5 million euros and will be fully paid off. Moreover – the</p>

	partnership agreement provides a guaranteed minimum income for the private partner of Chios Municipality. In case the turnover of parking exceeds a certain level additional profits will be split between public and private partners. If the income exceeds a certain level, the additional profit will be split between the public and the private partner.
Place:	Chios Municipality
Date of approval:	01 september 2008
Status of project:	The contracting authority is currently preparing the tender documents for the selection of consultants.
Indicative budget:	6. 5 million euros
Duration:	30 years
Construction period:	1 year
Period to operate:	29 years

Project name:	<b>Development and implementation of integrated system for payment in the city transport</b>
Sector:	Transport
Contacting authority:	Athens Area Urban Transport Organization S.A
Supervision authority	Ministry of transport and communications
Project discription	The project involves the design, financing, put into operation, maintenance and management of integrated automatic charging system of city transport for all kinds of public transport of Athens Area Urban Transport Organization S.A., existing at the moment and for future forms of public transport in wider region of Athens. The period of the partnership is 12 years.

	<p>Contracting authority is Athens Area Urban Transport Organization S.A.</p> <p>The existing billing system in the public transport network of Athens is outdated and needs to be modernized. The aim of the new project is to solve a wide range of problems arising from the ordinary paper tickets and the old monthly maps, updating the services offered to users of the public transport and improving the management and control of the financial parameters of Athens Area Urban Transport Organization S.A., by adopting a flexible and low- budget policies and a fair system for dividing the profit between the transport companies.</p> <p>The average cost and availability of payments, that will be made by the Contractor to the private partner, which will take the project amount of 82 million euros (VAT). It is emphasized that payment of the partnership will not be at the expense of profits, respectively of collected fees, but from the financial resources of the Athens Area Urban Transport Organization S.A. in accordance with the investment program.</p> <p>The final amount that will be paid by the state will be determined after the completion of the tender procedure.</p>
Date of approval from PPP administration	01, September 2008
Status	The procedure for selecting technical and financial consultant is in progress.
Indicative budget	82 million euros

Project duration	12 years
Project name:	<b>Building and maintenance of buildings in administrative park in city of Alexandroupolis</b>
Sector:	Public sector – Alexandroupolis
Contacting authority:	Evros prefecture
Supervision:	Ministry of internal affairs, public management and decentralization
Project description:	<p>This new building will accommodate most of the staff of the prefecture (about 383 employees). This PPP project is part of the strategic plan of the prefecture of Evros. The aim is to deal with housing problems by replacing the buildings for rent in the prefecture with a single modern building built in an appropriate manner to meet the standards for construction and operation and reduce costs. Moreover, the concentration of all services of the prefecture of Evros in one place will reduce functional costs.</p> <p>Furthermore - during the operational period which will be 26 years, better management of property and infrastructure will be achieved by setting high quality standards, which will determine the payment to the private sector.</p>
Location:	Alexandroupolis
Project status:	Preparation of tender documents for selection of Special prurpose company
Status:	The contracting authorities with the consultants are preparing the tender documents for election of Special

	purpose company which will be responsible for the implementation of the project.
Indicative budget:	22 mln. euros (excluding insurance and capital repair costs)
Project duration:	26 years
Construction period:	1 year
Operational period:	25 years
Technical advisor of the contracting authority:	ADO S.A. - ALKON E.P.E - PAVLIDES OFFICE A.T.E.M
Financial advisor of the contracting authority:	EUROCONSULTANTS SA

Project name:	<b>Building and maintenance of new oncology hospital in Thessaloniki</b>
Sector:	Health- care
Contacting authority:	DEPANOM SA
Supervision:	Ministry of health- care and social solidarity
Project description:	<p>This PPP project involves design, construction, financing, maintenance, property management (cleaning, changing supplies, cleaning waste and catering), insurance and security of the new hospital, along with maintenance of all the necessary clinical equipment of the hospital.</p> <p>Contacting authority DEPANOM SA, a public company controlled by the Ministry of Health and Social Solidarity. The new hospital will have 400 beds and will be designed according to the specifications of</p>

	<p>other advanced oncology hospitals abroad.</p> <p>It should be emphasized that medical and paramedical staff as well as the managements of the new oncological hospital in Thessaloniki will be part of the national health.</p> <p>This PPP project is in the strategic plan of the Ministry of Health and Social Solidarity for offering advanced clinical services. It was needed for a long time and will significantly improve the delivery of medical and hospital services for oncology patients in Thessaloniki and Northern Greece.</p> <p>During the operational period which will be 27 years, a better property management and maintenance of infrastructure will be achieved by setting up high standards on which will depend the return of funds to the private sector.</p>
Location:	Thessaloniki
Status of the project:	Preparation of tender documents for selection of Special purpose company
Status:	The contracting authorities with the consultants are preparing the tender documents for election of Special purpose company which will be responsible for the implementation of the project.
Indicative budget:	330 mln. euros (+20% insurance and capital costs for the maintenance)
Project duration:	30 years
Construction period:	3 years
Operational period:	27 years



Technical advisor of the contracting authority:	ELINIKI MELETITIKI ANONYMOS TECHNIKI ETAIRIA A.E. - TEAM M-H CONSULTANTS ENGINEERS EPE - OMADA MELETON TAKIS GAVRILIS AND ASSOCIATES E.E.
Legal advisor of the contracting authority:	M. & P. BERNITSAS LAW OFFICE
Financial advisor of the contracting authority:	National bank of Greece, Grant Thornton Ltd., Greece Grant Thornton Ltd., Great Britain

Project name:	<b>Building of 26 school buildings in the regions of Peloponnese, North and South Macedonia and Crete</b>
Sector:	Education
Contacting authority:	Organization of school buildings
Supervision:	Ministry of national education and religious affairs
Project description:	<p>The project involves the design, financing, construction, maintenance, property management (security, cleaning) and insurance for 26 new schools in the regions of Peloponnese, North and South Macedonia and Crete through a PPP scheme. The duration of the partnership is 25 years. Contacting authority is The Organization of school buildings.</p> <p>PPP project serves the strategic goals of The Organization of school buildings- eliminate double shifts, replacement of rented schools, renovation of school buildings. Payments to private companies will depend on the quality of maintenance services, based on preliminary determined criteria.</p>

	<p>It is emphasized that the planning of educational policy and teaching is responsibility of the Ministry of Education and Religious Affairs.</p> <p>The estimated construction and maintenance costs of this PPP project are 94 million euros plus VAT. Capital maintenance and insurance costs are not included in this amount and are worth about 20% of the project amount.</p> <p>The final amount paid by the state will be determined on the basis of tender procedure.</p>
Location:	Regions of Peloponnese, North and South Macedonia and Crete
Date of approval:	01 September, 2008
Project status:	Preparation of tender documentation and selection of consultants.
Indicative budget:	94 million euros (20% insurance capital maintenance costs)
Project duration:	25 years
Construction period:	2 years
Operation period:	23 years

### **3. 2. SPAIN:**

The current framework of public-private partnership in Spain is governed in a broad way by Law № 30 for the public sector developed in 2007. According to this law there are three types of contracts that cover all activities carried out within the public-private partnership.

- Contracts for cooperation between the public and the private sector;
- Contracts for management of public services (including family companies);
- Contracts for concession of public facilities;

Here are the reasons which led Spain to become a world leader in these practices and, moreover, in the most appropriate example of Bulgaria and Burgas for using these practices. Leadership is not due only to the experts of the Spanish administration, but also because of the advantages of Spanish companies gained in their work on projects worldwide.

Specific projects that will be analyzed are as follows:

- Management of municipal sport centre in “Linear City” area, Madrid;
- Newly built small town in the region of Madrid megapolis from the idea of arh. Arturo Soria;
- Preparation of a project, construction and management of a sport complex with indoor swimming pool in Alovera Municipality;
- Management of city lightning in Valencia;
- Construction and operation of scientific and technological center in Las Tablas district, Madrid;
- Reform, conservation and exploitation of a highway M 30 (the Madrid ring road) through joint venture;
- Construction and operation of parking lots to be used by permanent residents of Madrid;
- Development of a project and construction through public financing of a cultural center town hall building, underground parkings and central square of Huelva;
- Design, distribution and operation of the wireless communication network in the province of Valencia;
- Service contract for the management of call- service and on- site service of citizens in areas of "Linear City" (Madrid).

### **3.2.1. MANAGEMENT OF MUNICIPAL SPORT CENTRE IN “LINEAR CITY” AREA, MADRID**

Subject to contract is management and operation of public services in the sports center called “the Quarter of Bilbao”, located in the area of "Linear City" of Madrid. It’s not a matter of construction, but management and operation of an existing facility.

The total area of the center is 28 596, 74 square meters. It consists of Area A for indoor activities and Zone B for outdoor activities.

Zone A (indoor area) consists of first floor, where are the swimming pools used for training and other purposes, pharmacy, administrative area, physiotherapy and dressing rooms and ground floor with machine room and water treatment plants.

Zone B consists of a football field.

The service, subject of the contract contains the following:

1. Management of sports facilities for achieving perfect operating of the sport center. For this reason this section includes the following aspects:

- Maintenance and storage of instalations;
- Maintenance and storage of machines and equipment;
- Information and customer service;
- Service of dressing rooms and sport equipment;
- Cleaning;
- Control and Protection;
- Collection of service charges;
- Hiring and management of all the personnel needed to provide the above services.

2. Develop and update a program of sports activities.

In the documentation it is clearly indicated the need for the development of programs that should be regularly updated, including the obligation that to the local football team will be able to use the facilities during working days and weekends to carry out local sporting events.

3. Sports- medical activities:

In the documents it is clearly written the obligation to be ensure medical care for at least 8 hours a day.

In respect of **the obligations, which the concessionaire** must perform, they are the following:

- Maintenance and storage of the facilities, which means that everything needed for permanent, proper and smooth functioning of installations and maintenance of all equipment covered by the service must be ensured.

- Necessary available personnel: the concession company must have available at any time, the offered personnel, as well as their contracts, diplomas, work schedule etc. The company is also obliged to maintain permanent staff to work inside the halls and perform their duties.

**Contract duration:**

The contract is for 10 years with an option to be extended periodically for three years but not more than 25 years.

In this type of contracts that relate to management services, payment is based on two sources:

- First - fixed periodic payments made by the municipality as a compensation for the management of the service. This payment is a subject of public procurement. In this case, the price is fixed at 300,000 euros per year.
- In addition the right of the concessionaire to collect fees from users of the service is determined. The fees are updated each year, according to the administration norms, but they must be consistent with those set in the tender documents.
- In addition to the above stated, the Concessionaire has the right of additional revenue from the use of machinery for retail sale, toilets and sports gear, etc..

**Negotiation criteria:**

- **Project for management** (45 up to 100 points), by evaluating the organizational aspects of the center (20 points), measures aimed at improving, strengthening and maintenance of facilities (15 points) and proposals for improving infrastructure facilities (10 points).
- Economic Offer (30 points) by evaluating the lowest price paid annually by the administration;
- Offer for sporting services (25 points): evaluate the offer with most aspects of services such as classes for children, youth, adults and disabled people;

Documentation contains economic and financial plan for using these services, in which are listed in details some key aspects i. e. evaluation of current expenditure and revenue from paid services. On this basis, is calculated the compensation of the administration, which must be fixed at € 300 000 annually, with calculated profitability up to 13, 89% percent, before taxes during the entire period.

### **3.2.2. PROJECT DESIGN, CONSTRUCTION AND OPERATION OF A SPORT COMPLEX WITH INDOOR SWIMMING POOL IN ALOVERA:**

This project is for construction, management and operation of the sports complex on land which is municipal property. The essence of the contract is the project design, construction, equipment, maintenance and operation of a sports complex with indoor swimming pool and other services, performed on a terrain which is predominantly public asset.

#### **The obligations of the concessionaire are:**

- Design of a project for the construction of a public building- subject of the project;;
- Construction of a public building;
- Operating of the building;
- Guarding the buiding and equipment;
- Repair and maintenance;
- Design, construct, repair and maintain of additional buildings connected with the main building;
- Operation of additional buildings;

In meeting these obligations it is clearly stated in the documentation what remuneration may recieve the concessionaire:

- In order to finance the construction, the municipality sets the annual investment to be 250,000 euros for the first 20 years from the start of service. This contribution is embedded in the TOR prepared by the authority;
- Furthermore, the concessionaire will be entitled to receive income from customers using the facilities. Fees, which are applied in these cases (unlike the case before that) are also a subject of public procurement on the side of the companies, which have applied. The combination of conditions determines one maximum tariff, which can not be exceeded.

The period of concession is for 30 years. The maximum period for construction is 24 months.

As not only the management of services is subject to this contract, but also the execution of construction works, this is recorded (unlike the previous case) in the evaluation criteria. On this basis, specific criteria are as follows:

- Economic Offer (25 points): which contains not only the proposed municipal investment, but the scheme of payment of fees and payment plans;
- Basic Projects (20 points): Evaluation of the project, which will be implemented;
- Management (30 points): Evaluation of relevance, level of implementation and good management model, which should take into account the services and activities that will be provided.
- Experience (5 points);
- Competitiveness of the bids by the bidders; (15 points);
- Execution time for construction (5 points): It is important to determine a criteria of prudence, which does not allow periods shorter than 17 months to be recorded in bids. In this way, cases where the period is shorter or it is decided that the offer can not be put into practice, the project may be rejected.

It is interesting to note the differences between this case and the previous case, either in terms of the size of the project (management and operation, on one hand and construction, management and operation on the other), as well as in terms of some additional elements (personnel, activities, tariffs, etc..). These differences are because of the different size of the administration which has announced the public procedure.

### **3.2.3. MANAGEMENT OF CITY LIGHTNING IN VALENCIA;**

In this case this is a public service provided at local level and important for the municipality, which is the city lighting and therefore its implementation is of great importance.

Employer of the project is the Municipality of Valencia.

Date of approval: 03. 04. 2009

Recipient respectively for North Zone (ZONA NORTE-ETRALUX), South Zone (ZONA SUR-IMESAPI).

Published in State Gazette of the region of Valencia 11/09/2008.

Budgetary basis of the procurement: 1 724 137, 93 + 27 862, 07 from VAT. per year for each zone.

Payment when determining the executing company: 11, 40% reduction of prices in north zone, 11, 10% reduction of prices in south zone.

Subject of the contract for management of city lighting of city of Valencia, which includes preserving and maintaining of all elements: urban lighting installations, as well as the implementation of the initial steps in development, reform and maintenance of the facilities of city lighting.

According to the size of the objects, the contract is divided between two "independent zones: north zone and south zone, separated by the bed of Turkey river. Each of them has a different lot of the tender procedure. The two zones together are a basis for calculating the budget of the tender procedure, which maximum annual amount is 1 724 137, 93 euros (without VAT) for each zone. The final amount is 3 448 275,86 euros (with VAT).

This budget is calculated for a period of five years, which is a total amount of 17 241 379, 30 euros (VAT included). It is envisaged that the contract may be extended for one year, but not more than five years.

In documents the obligations of the executing company are clearly written:

- Appoint an authorized representative to contact the administration;
- To hold an office and headquarters in Valencia;
- To have technical staff and human resources as specified in the documentation or greater, who will work until the end of the project;
- Pay wages and social insurance of the workers required for the implementation of the service.
- To ensure all workers with the necessary protective equipment and provide any other in case of incidents.
- To ensure uniform clothing designed for the implementation of these services, including the emblem of the municipality of Valencia on working clothes.
- To determine the working hours and shifts of staff, that will ensure the smooth implementation of the service.
- To provide the staff the necessary equipment for the implementation of the service.
- To have cars and appropriate tools. All of them have to be new.
- To have a warehouse for materials and tools sufficient to carry out activities for repair and replacement;
- To have the necessary materials listed in the documentation with the appropriate minimum technical characteristics;



- To sign an insurance policy from the beginning to the end of the implementation of the service, that will cover life insurance for at least one million euros for each type of accident, injury, damage;
- Only the contractor is solely responsible for any failure or improper maintenance of the installations. For this reason in the documents are written a series of penaltie measures for failure, which are listed in details and which are a key part of the conditions in the documentation. These sanctions will be applied by the municipality when necessary. *Minor violations* are associated with unintentional poor performance of the services and are not dangerous for the people, animals or objects and don' t create any problems for public transport. Intermediate violations are, when there is a delay in inclusion or exclusion (5 euros sanction for each installed KW for a period of five minutes); penalties for deficiencies in energy savings (200 euros); penalties for unrepaired defects (10 euros per day for each power point for the first 7 days and increases after that), penalties for delays in replacement of bulbs and cleaning (5 euros for power point per day); penalties for delay of plug in of broken lights (10 euros per day for each point up to the fifth day and 20 euros after that), penalties for delays during the transfer electrical points; penalties for grounding problems (70 euros for a grounding per day), penalties for delay in the removal of fences, information pannels, etc.. (70 euros for each violation a day); penalties for delay of exclusion of another equipment (125 euros for each violation a day); penalties for non-attendance of the weekly coordination meetings (300 euros for each violation), and other violations such as poorly executed painting etc.

*Serious violations* are those that damare the quality implemantation of the service or the control of the facilities which is a result of intentional act or faulty inspection, as well as those which cause inconvenience of the citizens, pedestrians, etc. or which reduce the economic realization of the installations.

Very serious violations are repeated light violations of the same type, sanctions for irregularities in repair (175 euros for power point and a day), penalties for delays in replacement of bulbs and cleaning the glasses (35 euros for power point and passed week), penalties for late rehabilitation of failed power points (70 euros for power point per day), penalties for plugging in contril post without permission (300 euros); penalties for leaving the duty call center (300 euros); penalties for lack of protective equipment for staff (350 euros) sanctions for the absence of signal system and safety when carrying out activities (€ 350), or penalties for inaccuracies in the inspection reports (140 euros).

At last the criteria for evaluation of the offers regarding the public procurement should be marked. They are as follows:

- Economic offer (up to 35 points), the most points are given for the most economical offer;
- Human resourse used in working teams (7 points);
- Offered automobiles for the working teams (7 points);
- CO2 emissions of these automobiles (2 points);
- Organization and methodology for the implementation of the activity (up to 38 points);
- Equipments and tools for the implementation of the service (7 points);
- Measures for protection of the environment regarding the implementation of the service (4 points).

#### **3.2.4. CONSTRUCTION AND OPERATION OF SCIENTIFIC AND TECHNOLOGICAL CENTER IN LAS TABLAS DISTRICT, MADRID;**

This project is crucial because it is designed to provide the city with an innovative space for which purposes is provided a big terrain- public property. This is a good example of public-private partnership in order to improve the competitiveness of the local economy.

Desired effect is the design of project, construction and operation of science and technology center designed to carry out researches in the Las Tablas district of Madrid.

Contracting authority is Madrid Municipality.

Published in State Gazette on 18. 10. 2008 and the EU Official Journal on 21. 10. 2008 indicative budget of the investment is 276 846, 30 euros with VAT.

Payment when determining the executing company: first payment 66 000 000 euros, annual 200 000 euros and the following taxes to be paid by customers:

- Places for activities "Survey + Development + Technological Innovation: 14, 62 euros/sq.m. / month.
- Places for offices: 22, 50 euros/sq.m./month.
- Parking lots: 104.61 / sq.m. / month.
- Places for temporary parking: 2, 25 euros per hour.



In the documentation are the obligations of the contractor to design, implement, preserve, restore and repair the additional facilities required for the implementation of the objectives and to contribute to the better functioning and operation, as well as carrying out necessary activities for environmental protection. Regarding the financing of the operation, it will come exclusively from private sources, without requiring the administration to provide public funds for it. With the implementation of this project the municipal administration aims to create a science and technology center. This center is intended to carry out research activities and inclusion of production companies which will help for the development of the research and development in the area of information and communications technologies and their use in materials, energy, civil engineering, construction and management of cities. The project enhances the exchange of technology between the different units of the center and the overall innovation system of Madrid, which encourages innovative projects and the establishment of companies in the field of technology, attracting more investments and establishing cooperation with other departments, agencies and companies. In this way is increased the technological capacity of the city at international level and possibility to participate in competitions for technical assistance. Also, to cooperate with European centers that are developing technologies similar to the activities of the Centre.

Science and Technology Centre will have enough space to provide services in research activity, formatting, technology transfer and provision of facilities for companies with a technological focus (newly created or already existing), always in the area of the specialized technologies in the park . These spaces will be:

- Buildings with “many users”, with mobile offices and flexible in the rent system to be used by companies working on research activities and similar;
- Spaces for installation of laboratories and special equipment;
- Offices for creating of new technology companies:
- Offices for development of business activities- research or teaching with technological content, already consolidated;
- Lecture halls;
- Conference hall;
- Parking lots;
- Commercial places.

For the implementation of the project the municipality provides a public land. The budget foreseen is provided by the concessionaire company and is worth 276 846 301, 00 euros (with VAT).

According to a survey regarding the implementation of this project, within this amount is calculated the value itself of construction works, which would cost 149, 7 million euros, 12% additional costs such as consultancy fees for project preparation and management of construction works, property tax on buildings, installations, licenses, legal costs of validation and technical assistance.

Regarding the operation, which has to provide conditions for enough revenues, in order to keep the economic balance for the operation, a feasibility study is carried out, which shows that economic profit could be achieved only if: offices are rented, a promotion of the research work is made, cooperation with the business is developed and additional services are used in the Centre.

Regarding the income which the municipality will have from these activities is as follows:

- Contractor have to pay to Madrid Municipality first payment worth 66 million euros - this is the first payment of 50% within the next seven months with the formalization of the operation through the official signing of the concession contract. Second payment will be based on 40% of the first payment paid in the next seven months in providing the necessary licenses for carrying out construction works. And at the end, the remaining 10% will be paid at the moment of granting the right to operate and maintain.
- Once the building is ready up to 2011, the concessionaire must pay an annual operational fee- minimum of 200 000 euros.
- The remuneration of the concessionaire are specify with payments made by the customers for the following:
  - Premises for research activities;
  - Offices;
  - Parking lots;
  - Temporary parking.

Besides that, the Concessionaire will manage the project on its own responsibility and will be able to operate any additional areas of commercial and industrial usage for services, restaurants, gas stations, entertainment areas, parks and commercial premises which can be operated.

Briefly, the income of the concessionaire will come entirely from fees paid by companies located in the Center. We can distinguish the following categories of fees based on Feasibility Study:

- Fees from companies located in the Center, which business is mainly research and development activities and information technologies. These are activities which don't bring enough income for the company that developed them, but they are an investment for improving future processes. Therefore the efforts aimed at economic rental of premises is very limited;
- Those companies with manufacturing activities and which, may or may not have specific research activity and development of information technologies. The income from these companies may be higher. This is so, because work done by these companies, assures a direct profit and that's why the economic efforts could be stronger to let for rent on operational base;

- All companies located in the Centre require a minimum parking spaces to be used by their own employees, so underground car parks will be built, which number is around 2 450 to be used by employees and visitors of the Centre;

As a result the forecast for income from operation is calculated as follows:

*Revenues from rent of companies* engaged with development and information technologies – the space reserved for them will be approximately 50% of the total built up area above the ground (just over 36 000 square meters). Tariff of the spaces for research, development and information technologies, classrooms, laboratories and facilities for special equipment and technology platforms, is estimated at close to 11.4 evro/m<sup>2</sup>/month in 2011;

*Revenues from offices used for technology* - the reserved space will be approximately 40% of the total floor area above ground (i. e. around 30 000 m<sup>2</sup>) and the fee for this space will not be subsidized, as the possibility to generate profit from these spaces is greater than the above mentioned companies. The estimated fee is calculated at 13, 7 evro/m<sup>2</sup>/month in 2011;

*Revenues from companies providing additional services* - reserved space will be close to 10% (7 000 m<sup>2</sup>), which are calculated to have average annual income just over 2 million in shares in 2011;

Revenues from use of the parking area - built area under ground is about 81 000 m<sup>2</sup>, so the number of parking lots will be approximately 2 450. The estimated revenue for the parking lots is around 93 euros / month / lot. (3. 2 euros / m<sup>2</sup> / month) for permanent parking of organizations and companies located in the Center and 1, 50 euros per hour for occasional parking.

Regards the assessment of costs, it is calculated as follows:

*Maintenance*, which has no effect – the foreseen economic value for ten years is about 5% of project value- repairs, maintaining the Center in good condition;

*Income Tax* - The estimated cost for this calculation is to be calculated at 0.1% on the estimated value of the building in accordance with the cadastre;

*The total cost of free premises* - expected price will be the amount that the concessionaire will have to cover for the total costs of vacant land each year. The amount that will be considered during the first year will be 109 632 euros;

*Annual fee:* At the beginning of the operation will be 200 000 euros, which will be updated annually based on CPI (Consumer Price Index), which for the feasibility study is estimated at

4%. Very important is the factor which relates to the period of the concession which is for a period of 40 years, with a possibility for extension.

The concessionaire is obliged to submit the project within no more than three months and guarantee the implementation of activities for a maximum of 33 months.

This concession also provides penalties and fines if there is no implementation, as there are differences between minor, serious and very serious non-execution of activities. In the first case, penalties will be 100 000 euros, in second case 500 000 euros and in third case 1 mln. euros.

With respect to the evaluation criteria, they are as follows:

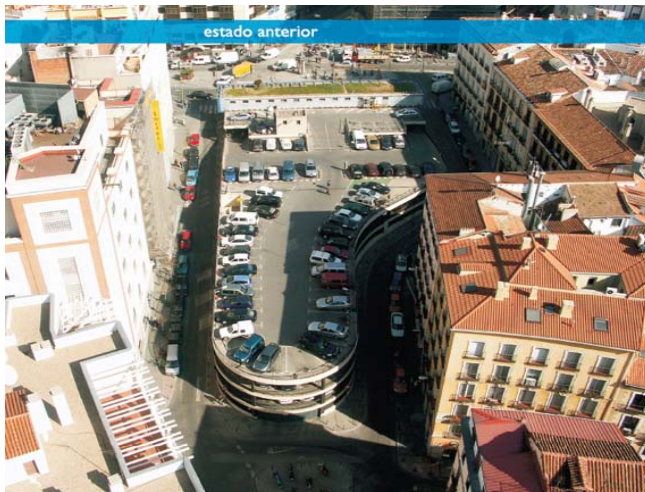
- Quality of the project – up to 15 points, which are separated for architecture (6 points), functional solution (3 points), technical decision (3 points), as well as improvements of the original design and technical consistency (3 points);
- A system that will contribute to energy savings (up to 9 points) by evaluating whether it meets the criteria for environmental sustainability, energy saving and easier maintenance and repair of buildings;
- Services and activities proposed to be developed in each area of specialization of Science and Technology Centre (up to 7 points). This is divided in: content of proposed services and activities in Research, Development and Information Technologies (maximum 5 points); work plan (1 point) and descriptive and functional analysis of areas for offices, equipment and facilities (1 point);
- Activities aimed at the general public (7 points), which include the contents of the proposed activities (5 points), the ability of the proposals to generate better scientific and technological knowledge in business (1 point), and evaluation of the spaces for these activities (1 point);
- A model for management and operation of the Centre (7 points), which includes measures aiming at following the fundamental principles of tender documentation (1 point), the criteria which will be applied for housing of companies (1 point), and economic and financial plan of the project (5 points);
- A plan for the operation and maintenance of buildings (up to 4 points);
- Evaluation of the first fee (40 points), as the maximum amount of points is given to the company, which has offered the highest fee upon minimum price of 66 mln. euros;

- Operation fee (11 points) – as already told it would be least 200 000 euros per year.  
Most points will be given to companies that offer the highest operation fee.

Having in mind the importance of the project and the interest of the administration of its implementation, the tender documents create a mechanism for measuring the quality of service. To exercise this control it is required the concessionaire company to submit an annual report of the Centre's activities, which should be referred in particular to such aspects as new organizations and companies that will join the center, compliance with the laid down criteria for admission, the number of users and the number of companies participating in training activities, etc.

### **3.2.5. CONSTRUCTION AND OPERATION OF PARKING LOTS TO BE USED BY PERMANENT RESIDENTS OF MADRID;**

Madrid Municipality, within its Parking Program 2007 - 2011, and in order to prevent permanent parking of vehicles on streets with heavy traffic, the construction of over 17 000 new parking spaces in the city is planned. To illustrate the main aspects of these 54 construction contracts two examples are given: Plaza "Santo Domingo" and parking located at Boulevard "Paseo de la Kastelyana".



#### **1. Plaza "Santo Domingo":**

Contracting authority: Madrid Municipality;

Deadline for submission of offers: 03. 08.2009



The announcement is published in State Gazette on 06. 07. 2009

Indicative budget: 4 497 332, 39 euros.

Above all will be analyzed, the documentation with special administrative clauses, that should be determinative in the contract of construction works, called "Construction and operation of parking for residents of the Plaza "Santo Domingo". The most important aspects of this contract are as follows:

- According to the documentation, the concession holder must be a joint- stock company, which should be established by the the company which has won the procurement within 15 days. The new company will perform service management and execution of construction works specified in the contract, assuming all obligations of the successful applicant to the municipality.
- In the contract is included the design of the project and the construction works. In this case, it is indicated explicitly that it is not just construction but also an "adjustment" because on this terrain was the oldest garage in Spain – private property since 1959, which has been expropriated by Madrid Municipality, partially destroyed because of the construction of plaza, and construction of 366 parking lots underground for residents of the neighborhood, a subject by this contract.

In this sense, it is an agreement similar to public construction, as the administration, which is the owner of the land gives the parcel to the entrepreneur to carry out construction works. Furthermore, the contract also provides operation of the parking by the residents, i.e. the company which has won the contest is also a concessionaire and therefore it is responsible for the operation, maintenance and repair of the parking lot.

The general provisions of the tender documents indicate that funding for construction works, subject of the concession, which value is estimated at 3 877 million euros (+ 16% VAT) will be entirely borne by the concessionaire, which may proceed to the negotiation of loans with credit institutions (informing the contracting authority), or other sources of private funding, after obtaining a preliminary approval of contracting authority.

Regarding the allocation of risk during the construction and operation of the project, the risk and responsibility are assumed by the concessionaire. It is responsible for the results of the construction works and sale of parking spaces. Therefore, as we'll see below, the amount of remuneration provided for this section will be calculated on actually sold parking lots. In this way, the municipality transfers to the concessionaire the construction risks, operational risk and search risk.

From the award criteria it should be noted the greater significance which is given to the financial offer compared to the technical offer: the price of a parking space is considered to be the most important criterion. 60 points out of 100 are awarded to the company which offers the lowest cost, and which maximum fee is set at 28,000 euros for the parking space.

On the other hand, this package of documents clearly specifies the payments that have to be made by the contractor:

- First, it bears the cost of project preparation (87 000 euros) and which should be paid to Madrid Municipality, within 45 days after signing the contract.

- Furthermore, in the same period the concessionaire have to pay an initial payment of 10 000 euros for a parking space (approximately 3, 66 million euros).

Payments to the concessionaire have the following structure:

Remuneration is divided into two parts: *a general payment and price for a parking space* paid by each user.

a. The total fee is paid annually by the user and is provided directly to the concession company.

b. However, the price for each parking space, which is also paid by the end user and which is determined by the concession company in its bid, is collected by Madrid Municipality. The administration provides these payments to the concession company in two parts: 70% after completion of construction and put into operation of the parking and the remaining 30% are distributed equally over the next 10 years (3% per year).

Regarding the time limits, the set of documents distinguish the the implementation of construction works which can not last more than 12 months from the day after the date of issuing a protocol for confirmation of reviewing the project and the duration of the concession established for 40 years from the day after signing the contract, i. e. before the beginning of on site works.

After the end of this period of 40 years (which may be reduced or extended according to the existing legislation, governing the contracts) the concessionaire is required to provide the parking to Madrid Municipality with all the facilities necessary for its operation, in good condition and good to use. At this point the concession expires, as well as the other agreements related to it, including the contracts of end users.

## **2. Boulevard “Paseo de la Kastelvana”**

Contracting authority: Madrid Municipality

Published in State Gazette on 30. 07. 2009

Indicative budget: 1 787 372, 30 euros

Procedure is close with a decree from 28. 07. 2009, because of lack of candidates.

If a comparison have to be maidbetwewen the two projects, there are no differences in the negotiating and award procedures, but there is a difference in the subject of the contract, because it includes the construction and operation but also the project design.

This feature is reflected in the terms of the contract, as it provides the necessary period for submitting the project (three months after signing the contract) and also it has specifications in criteria for evaluation of the proposals, as the technical quality of the main design project is more important (50 points out of 100) than of the price of a parking space, determined by the company (45 points out of 100).

### **3.2.6. DESIGN OF A PROJECT AND CONSTRUCTION OF PUBLIC PROJECTS - CULTURAL CENTER, TOWN HALL, UNDERGROUND GARAGE AND A PUBLIC SQUARE IN ALHARAKE (HUELVA);**

Alharake has a population of 16 000 inhabitants and is located in the southern peninsula. In recent years, there is a significant growth of population (increase by 60% between 2000 and 2006). For this purpose it is proposed a new administrative building to be built for the Municipality, which will meet the needs of the citizens, and thus avoiding dispersion of municipal services. Construction of so called. "Cultural House" is also suggested. It will house theater, community center and municipal library. This will raise the importance of the region as it has considerable landscape potential, which can be enriched through the development and transformation of the area. The main obstacle is lack of funding for a project that is estimated at a cost of 12 million euros. Among all existing options to undertake the construction of the facility, the municipality focuses on the possibility to split the costs between public and private sectors. This contract option was introduced in May 2008 by the Law of Treaties in the public sector, which in Article 11.2 states that "it is possible to have a contract for cooperation between public and private sectors, when it is previously arranged in Article 118, that there are no other forms of negotiations, which allow satisfaction of social needs."

This means that before the beginning of the procedure for signing a contract for cooperation between public and private sector, the administration, which is the contracting authority have to prepare an evaluation document, where it has to be noted that because of the complexity of the contract, the Administration is unable to determine in advance the necessary technical specifications for achieve the objectives or to establish legal and financial mechanisms to implement the project and to undertake comparative analysis with alternative ways to negotiations, which will be a prerequisite for achieving better results for the same price, total cost, efficacy or risk-taking, the reasons of legal, economic, administrative and financial nature for the acceptance of a new way of negotiations.

This is the content of a Preliminary evaluation document part of the annex, where the legal, economic, administrative and financial statements for supporting this decision are analyzed.

a) Legal statement

Different articles of the Spanish laws, which justify the choice of this option, under which the government entrusts a private body to perform for a certain period of time of the complete project are listed

- The determination of basic services which form the subject of the contract and specifying the main regime applicable to the contract, because the legal regime that can be applied to the contract is developed (Article 289 of the Act contracts in public sector).
- Conditions for the allocation of risks between the Administration and the contractor, specifying and distinguishing assumption of risks arising from changes in the cost of services and taking risks for readiness or seeking of these services.
- Efficiency targets imposed on the contractor particularly with regard to quality of services, quality of construction works and the supply and condition, in which they are given to the Administration.
- Remuneration of the contractor, which have to specify the criteria on which the calculations are made for the cost of investment, operation and financing and, if necessary, the revenue which the contractor may account during the operation of facilities or equipment in case it is allowed and does not affect the coverage of the needs of administration.
- Reasons and procedures for determining the fluctuations in wages during the period covered by the contract, which means cancellation of the regime for revision of prices, provided for in Articles 77 to 82 of the Act for public sector contracts.
- The payment methods and in particular the conditions under which at any fixed term the amount of the payments, which have not yet been made yet by the Administration and the contributions which the contractor must submit in the Administration as a result of penalties or sanctions, may be a subject of compensation.
- The methods for control by the Administration on the project implementation and particularly regarding the efficiency and the conditions for a contract with a subcontractor.
- Sanctions and penalties applicable in case there is a failure of obligations under the contract.
- The conditions under which it can proceed are an agreement or if there is no agreement, the Administration can make decision to change certain aspects of the contract or cancel it, especially in cases of:

a) Change in the needs of administration which will give her the right of several choices, by adapting the subject of the contract to its new needs.

b) Change in technical innovations.

c) Change in terms of funding adopted by the contractor. A key feature of the contract is that the funding of the service, which is its subject is made by a private partner, which later recovers the investment, receiving the agreed payment from the administration. It is therefore necessary to provide in terms of the contract conditions for its amendment in case of change in terms of funding.

- The control that the Administration reserves its right to exercise full or partial remise of the contract under Art. 120 of the Act in the public sector contracts;
- The purpose of construction works and equipment mentioned in the contract subject until its end;
- Guarantees that the contractor provides for the performance of their duties (article 83 to 91 of the Law of Treaties in the public sector).
- Reference to general conditions and, where appropriate, to the specific, which are applicable depending on the nature of basic services that the law established in respect of the prerogatives of the administration and implementation, modification and expiration of contracts (Article 120 of the Law of Treaties in Public Sector).

b) Administrative statement.

In this section an evaluation and comparison of the cost of time and labor, this requires that contractual variation to other forms of negotiation is made. In this way, it is pointed out that if for achieving the objective, it is chosen the signing of administrative contracts for construction, services and supply and this requires more resources, through the cooperation contracts are achieved "global and comprehensive" actions.

Thus when signing these contracts, which subject covers the requirements of Alharake Municipality, it would be essential the existence of suitable and sufficient budget credit, and if there isn't the appropriate steps have to be taken to create such a credit, despite slowdown at the beginning of procedures for as a result from this. According to the Law of Treaties in Public Sector, the only procedure that is applicable to this type of contract is the competitive dialogue. This is an exceptional procedure, reserved for this type of contract, so here is list of steps that must be taken:

1. Preparatory activities – start of activities involves preparation of documentation for preliminary evaluation which will point out the appropriateness and necessity of the contract and also carrying out a comparative analysis of other contract options, which will justify its selection. This assessment must be made by a Special Committee for competitive dialogue. After that is approval of Functional program that will later be added to the descriptive document of the contract (which replaces the set of documents for other types of contracts) and will include the nature and extent of needs, minimum legal, economic and technical elements which have to include the offers and also there will be a lists of criteria for awarding the contract.

2. Announcement of tender procedure: The law on contracts in the public sector is about the rules of restricted procedures for procedures, subject to harmonized regulation, so they will be used for analysis of the terms and conditions for processing. Restricted procedure involves the selection of the contractor in three phases:

The first phase in which, after the announcement of the deadline for submitting applications for participation, candidates are selected in a way to cover the Administration's requirements for solvency.

The next phase begins as a dialogue with the invited candidates

The last phase- receiving offers from the candidates and final choice of a contractor.

The first phase includes the announcement of the deadline for submitting applications for participation, which should be announced in the Official Journal of the EU and have to be no less than 37 days, also published in the Official Gazette where it should be not less than 10 days. The publication of these notices is made in the SIMAP (Public Procurement portal in Europe) via e-Notices, an electronic tool for preparing notices of public contracts, and their publication in the Annex to the Official Journal of the European Union.

The second stage begins with sending of written invitations simultaneously to candidates and the contracting authority will hold a dialogue with the selected candidates. Its purpose is to identify and determine the appropriate resources for meeting their needs. During this dialogue may be discussed all aspects of the contract with the selected candidates. The contracting authority will continue the dialogue until it is able to determine, after comparing them, if necessary, solutions that will meet their needs.

After the dialogue is over and all participants are informed, the contracting authority invites them to submit their final offers on the basis of the solution or solutions presented and specified during the dialogue. A deadline is determined. The contracting authority shall evaluate the offers submitted by the applicants on the basis of the selection criteria specified in the notice or the descriptive document.

c) Economic and financial statement:

Special Committee for competitive dialogue on the basis of financial complexity, suggested by the scale of the projects for a municipality like Alharake, analyzes the reasons justifying the choice of this contract:

- Through experience - number of implemented projects and supplies, as compared to their implementation in time and having in mind time for which these actions are performed;
- Through overall budget implementation, which amount may exceed 6 million euros, without the possibility a preliminary amount to be defined;
- Through economic savings that could lead to systematic implementation of all these actions together in a coordinated and efficient way.
- Through finding new ways of funding the contract, mainly due to legislation restrictions in the use of bank credit to finance municipal investments, as Budgetary Stability Act, which obliges local authorities to establish a system of balance in terms of the European System of Accounts (ESA) -95.
- Through economic inability to deal with the financing of identified projects, according to the condition of the municipal cash funds, as the Organization must rely on alternatives of traditional formulas, through cooperation with the private sector.
- Through co-financing of projects through grants from other public administrations, whose resources are strictly determined, transitional and quantitatively specified in the agreements on coordinated decisions, which gives the possibility for financial transactions by performing interim payments, according to the payment mechanisms established in the contract.
- Finally, as the construction of new municipal building, which will accommodate all units of the whole municipality, and it is a future property which can be used either to finance the project through the sale of public assets, exchange, lease, or other ways for achieving economic efficiency.



All this shows that for location as Alharake, this formula for contracts is not only recommended because of the benefits that can be derived new knowledge and capacity in managing the private sector, but also from the financial opportunities it provides.

### **3.2.7. DESIGN, DISTRIBUTION AND OPERATION OF THE WIRELESS COMMUNICATION NETWORK IN THE PROVINCE OF VALENCIA, DISTRICT ADMINISTRATION OF VALENCIA (VALENCIA PROVINCE).**

Contracting authority of the project is the Regional Parliament of Valencia.

The deadline for proposals ended on 20. 07. 2009.

The invitation is published in the Official Journal of the European Union on 19. 06. 2009.

Indicative budget is € 12 068 965, 51 euros (excluding VAT).

An "initial assessment" is performed by looking for "affordable prices" based on "recommendations of the Commission of telecommunication market", which will validate each step of the process.

At the meeting of the Regional Administration of the Autonomous Region of Valencia has been approved a draft contract for the supply, installation, maintenance and operation in the province of Valencia of a wireless communication network - owned by the administration. Because of the specificity and complexity of the implementation, it is decided, as in the previous case, to be signed a contract for cooperation between public and private sector, where the private sector can provide the necessary technology as well as its economic and financial capabilities, and also its management experience in this type of service.

Time set for the operation of the digital network of the province, including its maintenance, development and technological innovation is 10 years with two possible extensions of 5 years each (maximum: 20 years). The start of developing the network will be after the formalization of the contract, which will contribute as much as possible to support municipalities to provide resources and electronic systems, so the citizens to be able to access public services. Time limits will be determined in the process of competitive dialogue, although initially it is considered appropriate to be achieved a coverage of 90% of city municipalities of the province of Valencia for five years.

As for the maximum price approved for participation in the program, it is 14 million euros, which will be paid to the contractor in annual payments of two million euros between 2010 and 2016, in addition to 300 000 euros, which the administration has in the budget, to make reports and provide technical assistance needed for the implementation of this agreement.

The project is at the stage of submitting applications for participation, with the provision that the final award of this contract will be in December, 2009, again in line with the development of the competitive dialogue described above.

The Evaluation Committee on this procedure will analyze the proposals submitted and invite relevant applicants. The following documents are submitted:

- A declaration stating the wish to participate and information accurately and properly completed;
- Proof of legal and professional qualifications;
- Statement that the applicant does not fall within the prohibition of signing contracts and is not in the process of financial indebtedness;
- Proof of economic and financial capability;
- Proof of technical and professional capabilities
- Preliminary questionnaire, which verifies:
  - Technical capability of the applicant to supply, implement and maintain the necessary infrastructure;

Proof of completed projects □ with external or internal customers, for designed projects similar to the proposal and which prove the technical and operational capacity of the applicant;

- CVs of persons responsible for the negotiation process, project proposal and its execution;
  - Technical Staff with experience in the implementation and operation of innovative wireless networks.
  - Description of previous experience in the implementation and operation of WI – FI networks.
- Declaration of compliance with the rules of free competition.

- Proof that the applicant is registered in the Register of the operator of the Commission for telecommunication market as a supplier (or a similar body in each country of the European Union).

After selecting the participants in the competitive dialogue, the Regional Administration of Valencia Autonomous Region will send invitations within ten days to submit an initial proposal for decision, in accordance with the trade and economic scenarios, which they have determined, in accordance with the baseline scenario included in the Document for expressions of interest.

In this proposal is presented a technical solution of this hypothetical scenario, as well as economic evaluation of this solution (understood as the sum of the supply and installation of equipment). Despite the initially proposed solution, the final characteristics needed for the project will be determined during the process of dialogue and therefore, it will be possible to identify and show additional or different characteristics. Finally, as a second part of the originally proposed solution, the applicant have to describe its proposal to operate in accordance with the technical solution proposed above and the economic evaluation of this decision. The scenario for operation will be identified in the dialogue process so that the decision which will be finally accepted will depend on it. Therefore, any final scenario is not close, as it is required by the applicant to provide their vision of what is the most appropriate model for the operation, which will assure the successful implementation of the project. In order to accelerate this process of dialogue, the participants are asked to justify the choice of model, from a technical, legal and economic perspective, and to calculate the necessary investments to develop it during the implementation of the contract.

### **3.2.8. CONCLUSION OF CONTRACT FOR SERVICES FOR MANAGEMENT OF TELEPHONE AND DIRECT SERVICES THROUGH THE SERVICE CHANNEL FOR CITIZENS OF LINEA MADRID (MADRID).**

"Lineamadrid" is a brand which includes services for the citizens of the Municipality of Madrid via channels for personal service by phone and Internet. In 2008, Lineamadrid served nearly 2.7 million phone calls (phone 010) and more than 2.5 million of personal service and advice in the offices for servicing citizens. The intention of the municipality in this case is to unify the contracts, which were treated separately before, in order to facilitate the

achievement of better economic conditions and services to citizens and to increase the coherence and complementarity between telephone service and the operators of Lineamadrid .

The services offered by Lineamadrid include provision of information about municipal services and procedures, issuing of leaflets, entries, write-offs and changes in the municipal register, as well as advertisement flyers and certificates, provision of distinctive markings for regulated parking service (including the payment of the relevant fee), obtaining duplicate cards for payment of municipal taxes and fees, as well as many others, all with the leadership and management of municipal officials and with the assistance of external services that are contracted.

In Chapters 1 and 2 of the technical specifications in the subject of contract there is an Annex, which defines the scope of services provided:

With respect to the telephone service it is required:

- provision of the necessary services by the phone for municipal information 010 by specialized personnel, with working time 24 hours every day of the year (foreseen are not less than 106 operators and 10 managers).
- provision of physical space and technology platform which are necessary for the provision of this service, including the accommodation and preparation of the space for these purposes, the provision of furniture, the introduction of the technology platform and delivery, maintenance and updating of the elements.

The service is evaluated according to the volume of 2.9 million phone calls, with an average duration of 3 minutes, 25 seconds per call.

A specialized service will be provided for support of the management and for analysis of the personal service delivered in 21 offices that service the citizens of Linea Madrid (whose working time is from 9 to 17 hrs continuously from Monday to Thursday, and from 9 to 14 hrs on Friday). In this case, many of the services foreseen for these offices must be provided only by the service personnel, such as the management of entries, write-offs and changes in the Municipal register.

In addition, the contractor must provide a technological platform for the places for servicing citizens in each of the offices, as well as the necessary licenses for use of the office automation tools and operating system.

Apart from that, for both channels the contractor shall:

- Provide supplies, which are to be consumed during the execution of work,

- Provide appropriate training to the employees,
- Ensure the quality of the services delivered,
- Analyze the offered services and formulate proposals for the introduction of improvements of the quality and efficiency in the delivery, as well as proposals for the introduction of new services.
- As well as all other functions, which may be part of the functions of Linea Madrid and which are not of the exclusive competence of the servicing personnel, when this is necessary for the proper functioning of the same.

In terms of the execution of the contract, it will be held in two stages:

*The first stage* for implementation and transition - it will be completed within maximum four months from the signing of the contract. During this stage the contractor must perform the necessary actions for the repair of the space and for the hiring and training of the personnel. The contractor will start providing the service gradually simultaneously with that until the current contractor ceases to do so.

*The second stage* for management and service - it begins after the full completion of the implementation and transition plan. The new contractor provides the service 100%. This second stage shall end two years after the signing of the contract, with a possibility for extension for another two years.

The tender documentation requires the establishment of a quality level for the service, which the company awarded with the contract should comply with. This company shall ensure the quality of the service according to determined minimum standards, for example, to serve not less than 90% of calls received on 010 in all time zones, as otherwise the contractor will be financially penalized. The quality of the service required from the prospective contractor includes also a high degree of satisfaction of citizens who call 010 or visit one of the offices of Lineamadrid.

It also has to be stressed that the tender documentation describes in details and very comprehensively the profiles and the procedures for recruitment of the personnel and the tasks, which have to be fulfilled, as well as the organization and delivery of the service through each of the foreseen channels. However, the most important part of this tender documentation is the payment to the concessionaire, because due to the absence of a fee or a fixed annual tax, it will be dependant on the demand for the service:

The company will issue monthly invoices, which shall include the following:

a) telephone services, invoiced on the basis of the number of serviced phone calls by the employees on telephone 010.

b) personal service, invoiced on the basis of the number of service hours in the offices of Linea Madrid and the delimitation between the hours of the information offices and those of the coordinators.

The invoices will not include other items, which means that all expenses for the implementation, application and the daily management of the services by the company awarded with the contract, shall be included in the price of the serviced calls, in this case on 010, or in the price of the delivered services in the Offices for servicing citizens, and that the company shall include in its financial offer all that, without exceeding the limit which is set for the contract (23.185.241 Euros for the two years duration).

Among the large number of PPP projects implemented by various administrations in Spain in recent years several examples have been reviewed. These are projects selected on the basis of a set of criteria in order to achieve greater diversity in the analysis. The criteria used are the following:

- The projects should be related to urban environment;
- The projects should be implemented by the territorial authorities (regional and local), in some cases associated with the development of the geographical area of Valencia.
- These should be projects which cover areas from different spectrum in such a way as to cover fields of activities such as (transport, sports, industry, lighting, etc..);
- These should be projects of different scale, and therefore implemented in the big cities such as (Madrid or Valencia), but there should also be examples of smaller municipalities (e.g. Alovera)
- In the end, the scope of the project may vary, ranging from projects for management of services leading to projects which include both construction and management and preservation of the infrastructure.

There are several types of contracts in the reviewed examples:

#### **Agreement for cooperation between the public and private sector**

Article 11 of the Law on Public Sector Contracts (LPSC) provides a new type of administrative contract agreement called Contract for cooperation between the public and private sectors.

This is a model of a PPP in Spain, which coexists with the traditional forms. It is used only when the administration cannot determine the tender, the technical, legal or economic conditions of the contract in advance.

According to Article 11 of LPSC this model is used for:

- a) Construction, installation and reorganization of construction sites, equipment, systems and products or property as well as their maintenance, upgrading or renovation, operation or management.
- b) Overall management of the maintenance of complex equipment.
- c) Production of goods and rendering of services which include the use of technology specifically designed to provide progressive and economically more profitable solutions than those that exist on the market.
- d) Other services related to the development of the public service by the administration or development of an activity of common interest, which it is responsible for.

The Contractor, being a private partner of the administration, may according to the order stipulated in the contract assume management of the activities which have to be executed, and full or partial implementation of the projects for their execution and negotiation of the specific services.

The payment to a private partner – contractor is made throughout the whole period when the contract is valid and it can be linked to the achievement of certain objectives.

This model is based on the so-called “excess contract”, whose actual subject is the subject of another contract, which cannot be completed under the ordinary regime due to its complexity and mainly due to the necessity to shift the burden of financing to the company. Thus the financing, assumed by the contractor, becomes an essential element of this type of contract.

The subject of this type of contract must always be tied to a specific purpose, representing a public service or service of common interest as opposed to the regime for concession of public sites in the new LPSC, where the designation is not concerned in the cases of concession of public sites (Article 7 of LPSC).

The specifics in this contract do not impair the law of the EU. Its classification as a contract, subject to the harmonized legislation, although not mandatory, represents an additional warranty. It should be proceeded to a **competitive dialogue (such initiative follows the principles of transparency and awareness, which is an interesting practice and is fully applicable in the terms of the Bulgarian local self-government)** only when the subject is complex, which is natural for this type of contracts. The directive does not

govern the arrangements for funding the contracts, the maximum duration or the distribution of risks.

One of the most controversial aspects of this agreement is whether it can be concluded only by public administrations or by any authority of the public sector.

Naturally, it has to be acknowledged that the principle of discretion for agreements, which is recognized in Article 25.1 of LPSC, allows an organization which does not constitute an authority of the public administration to benefit from this contract modification. For this purpose, of course, the mentioned condition that the subject of contract should be related to activities of public importance and interest, as Article 11 LPSC requires, must be complied with.

As already noted, if the contract is concluded between organizations, which do not represent public administration, the contract does not have administrative character, but is private. Therefore the civil regime for efficiency and expiration of contracts is applicable, and the authority concluding the contract does not have the familiar exceptional rights.

**Duration.** One of the aspects characterizing the forms of PSP in general is the existence of greater deadlines than usual to facilitate the recovery of the investment, made by the contractor in advance. The maximum duration of this type of contract is 20 years unless the subject is typical of a contract for concession of public facilities, when we adhere to the time regime of the concession (which allows a duration of 40 years, with a possibility for an extension of up to six years as a way to compensate for the distortion of the financial-economic equilibrium of the contract according to Article 241.3 of LPSC).

In any case, it must not be forgotten that the permission regime should not be construed as a permission for free fixing of deadlines, because Article 11 of LPSC binds the deadline of the contract with the time for repayment of the investments or with the duration of the foreseen forms of financing. This rule develops the general provision for determination of the deadlines in Article 23 of LPSC by adapting it specifically for this type of contracts.

### **Contract for management of public services**

The general concept of a contract for management of public services is set out in Article 8 of LPSC. Via this type of contract the public administrations award the management of a public service to a certain natural person or a legal entity.

By defining this contract variation as a form by which an authority of the public administration assigns the management of a service to a natural person or to a legal entity, in practice it is more about other cases of indirect management, while introducing as a novelty



the possibility for concluding a contract and the assignment of the execution of a certain service not only to companies, but to natural persons as well.

According to the contents of the entire doctrine under the general term Contract for Management of Public Services lies a wide range of contractual techniques. *"The term expresses simply a technique for management of services, rather than a specific contractual variation. This management of services is called indirect, i.e. it is performed by companies, as opposed to direct management."*

The Local Government Act states that it is the duty of municipalities to provide certain services which have to meet the needs of the local community.

In this way, the municipal doctrine defends the thesis that under the municipal autonomy and power of self-government available to municipalities and the powers which are to form and organize services within their jurisdiction.

In these cases, the municipality is required to *"decide about their public management, their "publication"* and this municipal decision takes place within the autonomy of the municipality, in order to declare a certain activity for a public service. This activity has to meet the legal requirements in order to be considered for such a public service."

As to the instrumental institutions, art. 8.2 of the Law on public sector contracts stipulates that no provisions of this title will be applied in cases where the management of public services is conducted via the creation of public entities for this purpose, nor in those cases where the same is attributed to a private company, whose capital is represented exclusively by the participation of the Administration or the public office of the same. When the service is managed by an autonomous public body, a public company or a trading company with entirely public capital, there is direct management of the services referred to in Art. 85, 85.bis and 85.ter of the Local Government Act. The concept for public service, which derives from the Law for public sector contracts is used in the broadest sense and includes all those, trying to achieve the objectives described as competence of the respective public administration. In order to be possible for a public service to be managed indirectly through contracts three conditions must be fulfilled. They are specified in Art. 251.1.2 of the Act for public sector contracts. The Employer must be competent in order to manage the service concerned. The service should have economic content, which will make it suitable for use by the contractors (the reference to the economic content has been removed from the new Art. 251.1, as it should be implicit). They should not include the exercise of power, related to public authorities. The

requirements above lead to the development of the concepts for competence and "Publication", economic content and not including the exercise of power.

We will resort to the traditional example of the municipal activities - transport. Urban transport is a public service, which is an object of concession, and vice versa - taxi services are not a public service in the full sense, but are an uncharacteristic or regulated activity under conditions of permits. Uncharacteristic services are activities without delivery which are targeted at society. Due to the existing special public interest towards these services the administration has rights to exercise intervention and control.

The activities declared for public services can be managed directly or indirectly by the Union, while other activities are subject to authorities and regulation in depth. This different regime is due to their previous classification without clear criteria for why some activities are public services in the full sense, and other services are uncharacteristic. However, given the fact that except in few cases, most services are provided with free competition (sports, health, culture), it is a practical rather than a legal criterion, which has application only in certain cases. The economic nature means that it allows the obtaining of economic benefits for their use, which is different, as we know, for the public initiative in business. There are public services that include business and economic activities (transport), while public business initiative is related to the transfer of property on the market for unpublished activities and such that are not within its competence, but in its capacity (Article 25.1 of Local Government Act), it may be any activity that brings benefits to the citizens (Article 96 TR 781/86) by means of a document, proving the compliance and expedience (Article 86 of the Local Government Act).

### **Companies with mixed funding**

Joint venture is another form of indirect management, where the local authority participates only partially in its social capital (Art. 85.2. (B) of the Local Government Act). Such participation may be a majority or minority, since just the company with exclusive public participation is excluded from the contract for management of the public services (Art. 8.2 of the Law on public sector contracts) as a form of direct management. Therefore, other natural persons or legal entities may participate as partners (art. 104.4 of the revised text of Local Government Act).

Furthermore, it should be noted that with regards to the contracts, they are governed by private law, although companies with capital where the participation (direct or indirect) of the public administration or of an autonomous body or legal entity of public law, dependent on or associated with it, is more than 50%, will adapt in contract activity to the rules for

qualification, advertising, tendering and procurement methods when construction contracts are worth equal to or greater than € 5,278,000 without VAT, delivery contracts, advice, assistance and services of value equal to or greater than 211,000 euros without VAT. The personnel of the company is bound by the same employment relations.

### **Contract for concession of a public facility**

The main points that characterize the concession of construction of public facilities, as specified in Law 13/2003 of 23 May (Chronological index of Legislation 2003, 1373), governing the contract for concession of public works projects are:

- ✓ construction of building facilities;
- ✓ concession risk;
- ✓ economical balance of the concession,
- ✓ diversification of funding.

The purpose of the contract for awarding of concession for a public facility is the implementation of some services by the concessionaire, including restoration and renovation of existing buildings, as well as the preservation and maintenance of the built elements; and the other side of the service consists of the right to operate the facility for a certain price. Under the new law this applies to concessions for construction and exploitation.

This also led to some changes in the very content of the contract, i.e. in the outset of the contract there is a requirement for the concessionaire to carry out works for repair or modernization, replacement and overall renovation.

The revised text of the Law on Public Administration Contracts stipulated the possibility to require from the concessionaire at concessions for construction also operation, development, design, implementation and renovation, maintenance and replacement or ancillary works associated with the basic works, and such that will allow better operation and exploitation, as well as the environmental actions associated with them; but in concessions only for exploitation, in any case it was necessary to include these actions in the Content and the Object of concession in the Tender documents.

Moreover, Law 13/2003 (Chronological index of Legislation 2003, 1373) extends the concept of the term public facility, according to the Law for contracts with the public administration (Chronological index of Legislation 2000, 1380), to include not only objects that are intended for public economic service, but also the necessary ones for the development of activities or services of economic interest. What happens is that this is not understood in the new law,

since these objects for support to the services of general economic interest may not be public facilities, in the sense of public property (such is the case of telecommunications). It is essential that the object should be public and suitable for exploitation. If the object supports a service of general economic interest, and furthermore is public (e.g., ports, railways or airports where the infrastructure remains public even if the service is liberalized) then it is very likely for it to be concessioned if it is suitable for economic exploitation also.

### **3.1. Italy**

#### **Logistic platform Civitavecchia (Rome)**

Rome International Port - Civitavecchia logistic platform is located in the Mediterranean at a strategic location for transportation and commerce in Europe by land, water and air. This is a very important place for Central Italy and the region of Rome. Furthermore, it is a good example of the development of an intermodule network that will turn Lazio into a logistics system of importance to the Mediterranean intermodule platform.

The logistics platform of Civitavecchia on the international port of Rome has direct connection to:

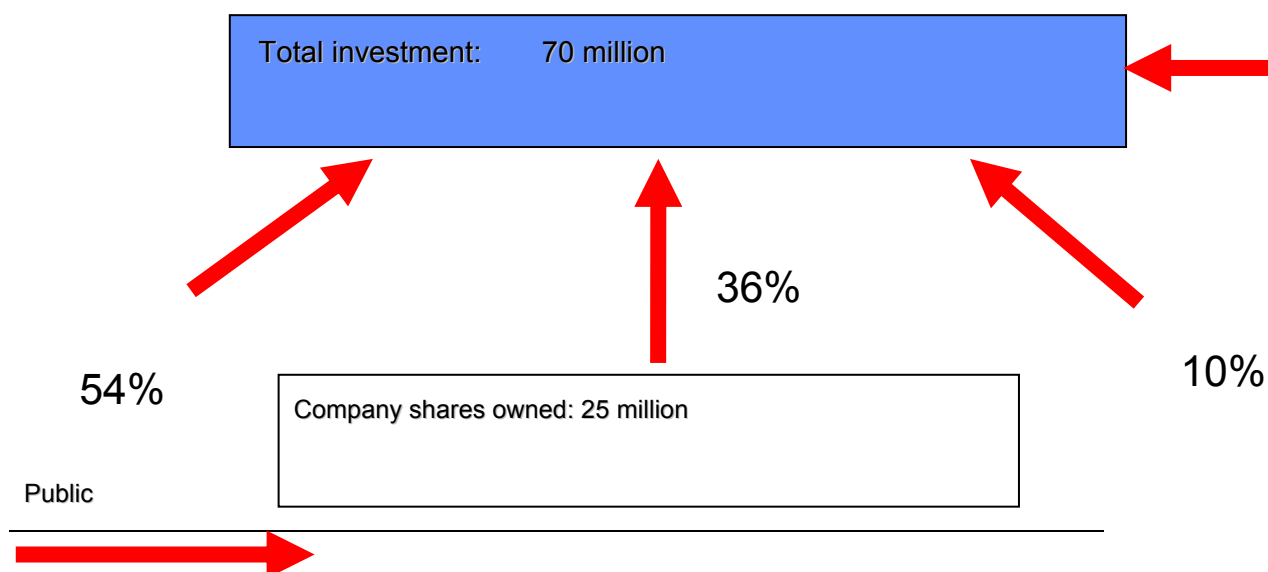
- Port Civitavecchia is connected to the international port via a specially constructed road,
- The national and European roads (via motorways A12 and A1), connecting Italy and Northern Europe
- The international Railway system via the railway line, passing through Rome-Genoa-France and Spain
- The international airport in Rome – Fiumicino via motorway A12.

#### **Key stages of the Project**

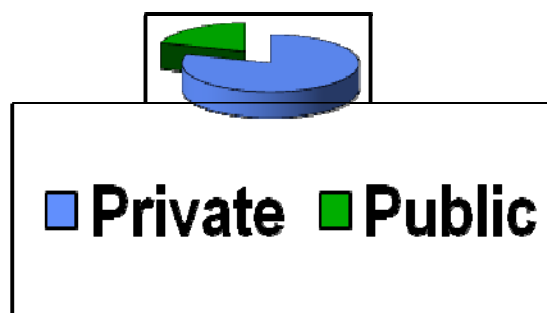
- 2000:
  - The Ministry of Transport and of the region of Lazio defines Civitavecchia as a strategic place for the development of the infrastructure in the region of Rome
  - Creation of a company only with the private sector
  - International port of Rome – logistic platform Civitavecchia has prepared the project for construction of buildings and business projects
  - Preliminary approval of the business plan by a certified Bank
  - International port of Rome – logistic platform Civitavecchia presents the project and the business plan to the municipality of Civitavecchia
- 2001:
  - Publication of the project

- Preliminary contract between the municipality and the project International port of Rome – logistic platform
- 2002:
  - International port of Rome – logistic platform Civitavecchia, increases the capital and the participation of the public sector
- 2003:
  - Special Committee on Government and local authority projects approves the project and grants a building permit
  - Start of the project
- 2005:
  - Bank loan for the international port
  - ICPL increases the capital again and decreases the participation of the state shareholders
- 2006:
  - Completion of the construction of buildings
  - Start of the operation of the International port of Rome – logistic platform Civitavecchia,
- 2010:
  - Forecast for the key stages of the project

Structure of the project – funding



## Ownership structure of the company



- Offered services
- Transport of containers with goods from and for Port Civitavecchia
- Positioning of the containers and parking
- Unloading, control and storage in warehouses at controlled temperatures (room temperature, +4°C and -25°C)
- Monitoring of the compliance with food quality requirements (requirements of HACCP).
- Approval of foods outside the EU and their management
- Administrative and financial control of the goods
- Delivery services
- Labelling, marketing, packing
- Transportation of goods: by rail and road
- Customs formalities: storage, VAT, temporary storage, goods from countries outside the EU, import, export and transit

## Main buildings

- *At the customs* - 2 warehouses at the customs (10.500 sq.m.), 4 rooms with refrigerators (10.000 cubic metres), total area of 20.000 sq.m.
- *Transport Centre* -3 warehouses with materials which will be transported, with places for storage (16.000), total area of 20.000 sq.m.
- *Intermodule terminal (Rail-roads)* : a warehouse with area of 7.000 sq.m. with large area in front of the very warehouse 12.500 sq.m. and three railway lines.
- *Area for vehicles*: maintenance and repair of lorries and containers, parking

## Construction of a public Parking Lot in the town of Palermo (Sicily region)

### Key features of the project

*Parking srl* is a company, specialized in the construction and management of parking lots.

*Parking srl* obtained approval from the Italian authorities for the construction and management of a parking lot, as well as of a building where the offices will be housed. This represents a project for concession for three years and 27 years of management.

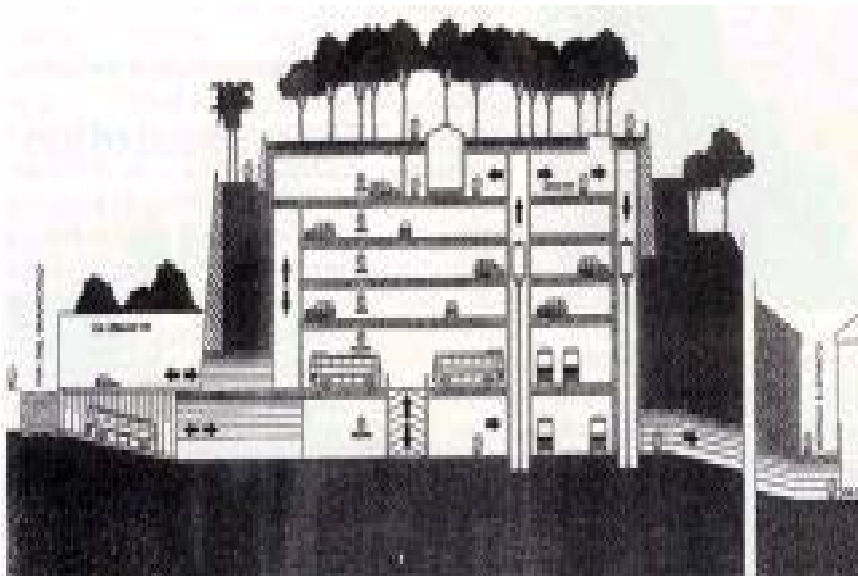
The profit is consistent with the social impact of the facility. The municipality transforms it into municipal and its contribution amounts to 50% of the investment value.

Parking places  
underground floor

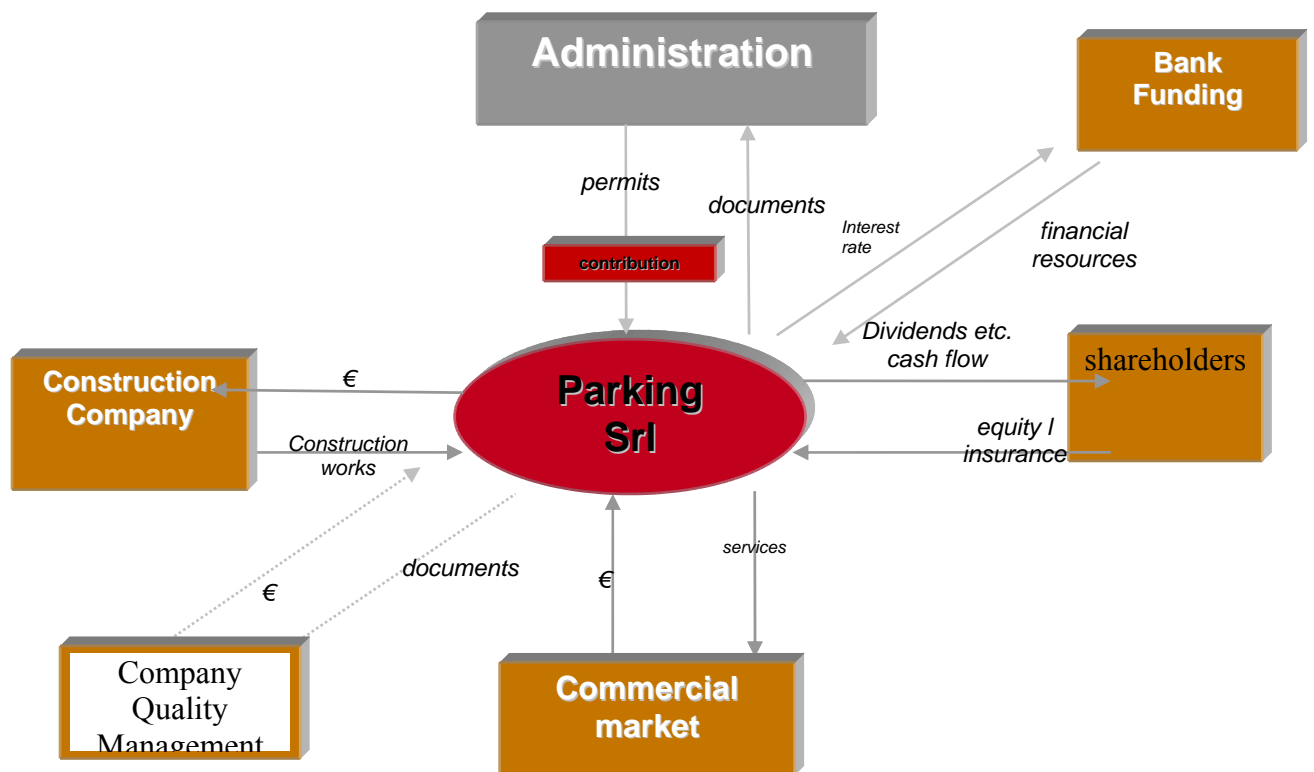
400

parking places  
ground floor

100



### Structure of the project – financial



### **Company specialized in urbanization and urban development**

Companies which are specialized in urbanization activities and urban environment are joint-stock companies which include entities from public and private sectors. Their purpose is to make a plan, to perform the design and implement projects in the field of transformation of cities.

These companies are regulated by Article 17, paragraph 59 of Law 127/1997, which is now included in the new code for local administration; altered by Article 44 of Law 166/2002 and interpreted according to the understandings of the Ministry for State Administration.

By law these companies are established by the municipalities or the cities to prepare a plan and to implement the project in compliance with the existing laws. The shareholders from the private sector are always selected according to the established procedures in accordance with the procurement law. Such companies are not only used for building and strengthening of buildings, but also for a complete change of structure, via a modification of the functional characteristics of the building. The intervention of these companies is necessary not only for



the reformation and renovation of old buildings, but also for defining the functions and characteristics of new urban spaces - parks, sports centers, etc.

Main features:

- State authority which is in the heart of the initiative
- Clearly announced corporate objective. This objective relates to the implementation of transformation - the purchase of land or buildings and marketing of the results
- Company consisting of shareholders from the private and public sectors

The big cities and the municipalities are responsible for the preparation and approval of designs and are at the heart of the initiative. They are also responsible for the preparation of legal documents and different programs. In this context, these companies are a tool of action of the cities for the implementation of the initiative in the field of urbanization and sustainable development. These companies may use contractors for the execution of work, but the local government bears responsibility under the contract.

In mixed companies (with representatives of the private and public sector) the bureaucracy and administrative procedures are avoided. The local authorities are responsible for:

- The determination of the corporate capital and of the share of the individual partners from the private sector is based on the company objectives and the specific characteristics of the initiative.
- Selection of a suitable partner from the private sector, taking into account the objectives of the company. The partners from the private sector can be grouped into three different categories:
  - o Investors who are interested in the investment and the implementation of the programme. This category includes: insurance companies, institutions granting credit funds, funds with special investment purpose, pension funds.
  - o End users - those who receive profit not only from the investment, but also from the maintenance and asset management (operation and maintenance of restaurants, parking lots, etc.).
  - o Those who provide services, and especially those who are part of the implementation process of the project, but have been performing specific tasks (electricity, catering, cleaning, security, etc.).

The choice of a local authority depends on the company's role for the transformation, as well as on its mutual relations with the other participants on the market. In any case, the partners from the private sector play an active and direct role in the implementation and realization of the project. They must provide not only the usual services but also long-term services (e.g., providing models for optimization of the management and financing).

The use of such companies allows the local authorities:

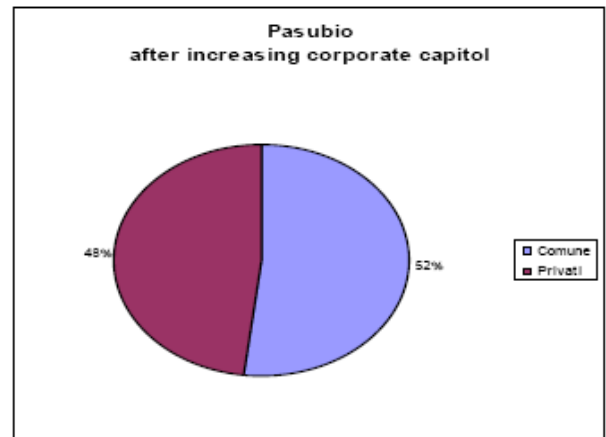
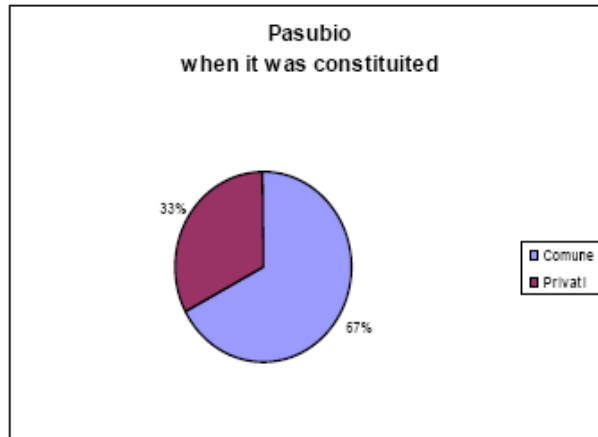
- To implement initiatives of public interest.
- To find additional technical and other resources
- To provide access to different resources for the financing of the initiative
- To avoid changes in the implementation of other city management tasks

The use of such mixed companies allows private companies or representatives of the private sector to participate:

- in innovative ventures with important and positive impact on business image and market position;
- cooperation and collaboration with state authorities and improvement of administrative procedures;
- assistance for the implementation of the project through the participation of a company, which has significant capitals on the market
- obtaining economic and financial profits/benefits.

### **Pasubio Project**

The aim of this project is to meet the needs of the region of Pasubio, which was an industrial zone around Parma at the beginning of the century, and is now used as a residential area. The company, specialized in urbanization and urban development in the town of Pasubio was established in 2002. The capital of the company is € 1.200.000 and is divided as follows: Parma Municipality – 52%; private sector: 48%; external funds: € 2.079.771,93 from Emilia-Romagna Region and € 6.155.955,62 from Parma Municipality.



Source: S. Poggesi (2007)

According to the Italian legislation, this company may:

- buy land and real estates for the implementation of the initiative (in compliance with existing laws)
- prepare plans and implement the initiatives in the field of urbanization in Pasubio Region.
- perform marketing and management of real estates, buildings and work on the project

The initial and final plan for the execution of work shall be prepared and administered by the municipality; the planning of work which will be used for commercial purposes is in the hands of the company. The company applies the rules and laws on public procurement (now the Code of public contracts) relating only to government contracts, ensuring flexibility and promptness.

The private sector and the municipality shall transfer the real estates which they own to the Company.

It seems that during the establishment of this company, the Municipality of Parma has obtained significant advantages - technical knowledge and expertise to develop operational mechanisms for programming, monitoring and control of the whole project and management of the processes for urbanization.

### **Costs and Benefits**

Income (forecast)	130-145 million euros
- from sales	93%
- from government funds	7%
Expenses (forecast)	110-125 million euros

- training 60%
  - o Public Urb. 15%
  - o Buildings for private use 45%
- Purchase of land 25%
- Design and others 15%

The total and final economic value of the real estates which will be created or modernized compensates the estimated costs. Works on urban development will contribute significantly to the value of the new estates.

### **3.2. Czech Republic**

The Czech Republic has 10 million inhabitants and over 6,000 municipalities. The largest municipality is Prague with over 1 million inhabitants, while on the other hand there are municipalities with only hundreds of people. Their income is combined – tax income, central government grants, EU funds, commercial activity. During the public administration reform in the last 10 years there has been great decentralization of responsibilities, and change in the property income cash flows in the Czech Republic. In result, municipalities are responsible for social services, primary and secondary education, infrastructure, urban transport, water and waste management, and several other services for residents. They provide these services through agencies or via contracts with private companies.

#### **Types of PPP projects in the ordinary course of Czech municipalities**

PPP contracts in the Czech Republic are concluded under several different laws. As a result, the Ministry of Finance was informed about only few of the PPP projects. In order to obtain knowledge of the PPP, the Minister of Finance created the Czech Centre for PPP which was intended to analyze the situation through direct communication with the municipalities. The description of the types of projects and specific examples offered below are based on a database of concession projects<sup>2</sup> of the MoF and for the research and analysis which were conducted by the PPP center.

#### **Water supply and sewage and waste water treatment**

Almost all Czech municipalities have water supply and sewage, as well as waste water treatment structures (equipment for the supply of drinking water, sewage and waste water treatment). Operation and maintenance is usually provided by regional private companies. The contracts between the municipalities and providers are long-term. Big part of the income of providers is covered by charges to end consumers, which means that these projects can often be classified as PPPs.

Many of these contracts were concluded before the adoption of the law on concessions in 2006. These are usually rental agreements or contracts for construction, renovation or leasing. After the Concessions Act entered into force, all new contracts for water supply and sewer and waste water management which include construction or reconstruction involving EU funds have to be prepared within the law on concessions and / or public contracts law.

### **Public lighting**

Public lighting of streets, roads, pedestrian areas, parks and lighting of buildings, including on holidays and Christmas, is part of the public services which are responsibility of the municipality. Nowadays, security complying with the requirements of new technology, specialized knowledge of teams and technical innovation that develop very quickly, becomes important. Now it is becoming common practice that municipalities transfer the responsibility for the construction and operation of the new system for street lighting to the private partner. Great part of these contracts are nameless.

### **Central Heating**

The situation in this field is similar to the one of water supply and sewer and waste water treatment. Most of the contracts are long-term. The private partners are selected according to the procedure in the Law on public contracts. Some municipalities have established their own specialized companies, which also hold a license.

### **Leisure Facilities**

There is no equal attitude of the individual municipalities for the provision of public services for leisure time, especially culture and sports centres. There is no legislation imposing duty to the cities to care for their residents (there are exceptions for libraries, museums). Many of these facilities were transferred to the municipalities as former state-owned properties and the municipalities finance and manage them. This is usually the case with cultural institutions as well. Sports facilities are usually managed by companies established by the municipalities and supported by the municipal budget. In other cities, many of these services are provided by the private sector and partially supported by the administration. In other places, many of these services are offered by the private sector.

### **Public transport**

Transport in cities is one of the most important items in the budget and at the same time it is usually the biggest problem to be solved. Usually there is a shortage of services in the field of road maintenance and parking lots. The Czech Republic is currently preparing a new law on public services in the field of public transport to apply Regulation (EC) № 1370/2007 of the

European Parliament and Council of 23.10.2007 for public transportation services by rail and road route. Most of these services are offered by companies that are owned or founded by state or urban municipalities. Some routes are served by private companies and those contracts can be considered for PPPs to a certain extent, but there is no standard solution. In the Czech Republic the public debate is in respect of to what extent this market should be open to private companies (not state or municipal) and how to ensure future government subsidies for these services.

### **Social and health services**

The Czech health system includes public and private providers, both of which are funded by the public health insurance system. The private providers emerged during the privatization or as new buildings constructed by private companies. In this situation there are no big opportunities for PPP in the healthcare system in terms of providing medical care. Providing support services - buildings, diagnostic, therapeutic and other equipment, supply of medicines and supplies, incl. parking lots, services for the comfort of personnel, etc.

There is a shortage in the provision of social services, especially holiday homes. These institutions have been privatized, and a system of government budgetary support and regional support leads to the decision of some municipalities to resolve the problem by PPP.

### **Examples of PPP projects in the Czech municipalities**

The central Czech administration provides information on public-private partnerships that are implemented within the law on concessions and public contracts law. Information for other PPP projects can be found, depending on the willingness of the individual municipality.

### **PPP in accordance with Commercial and Civil Codes**

There are several PPP contracts concluded by Czech regions and municipalities within the Commercial and Civil Code. Here we describe five of them which could find some application in the Municipality of Burgas.

## Airport Brno – Turany



Brno city with a population of 380,000 inhabitants is the second largest city in the Czech Republic, and is also the centre of South Moravia.

The PPP project for the airport Brno-Turany is based on a 50-year contract between:

- South Moravia Region and
- The private joint-stock company Brno Airport.

The contract was concluded in 2004 with the purpose to ensure the preconditions for long-term activity of high standards and development of the airport.

The private partner is obliged to:

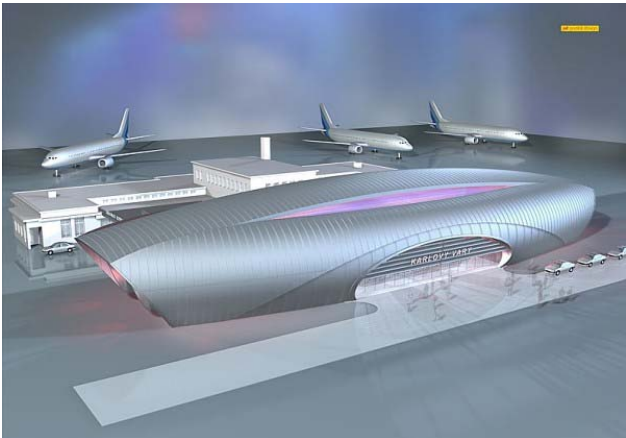
- Operate and maintain the property,
- To provide services to a public international airport,
- To provide telecommunication services,
- To invest regularly in the property within the 5-year development plan approved by city authorities,

The private partner is required to pay a rent once a year at the level of depreciation, but not less than the level specified in the contract. He is obliged to maintain the property continuously. The contract defines the minimum level of annual investment as a percentage of the annual turnover.

The contract sets out a development plan and a strategic plan for each period of 5 years. During a termination of the contract, the private partner is obliged to transfer ownership

and the company at terms which are acceptable for the continuous operation of the airport and the related appropriate services.

**Karlovy Vary Airport**



The city of Karlovy Vary has a population of 52,000 inhabitants and is the main city of Karlovy Vary region - an international spa resort.

Partners in the contract for PPP for the airport are:

- Karlovy Vary region and
- Company, publicly owned airport Karlovy Vary. This company was established and operated as a commercial company 100% owned by Region Karlovy Vary (Czech is divided into 14 regions - areas). Shares may be sold - this is a decision of the regional administration.

The company must:

- Reconstruct the airport,
- Operate and maintain the property,
- Provide public services to the international airport,
- Provide telecommunication services,
- Invest regularly in the property.



### **Senile home for old people in Jilava**

Jilava is a city on the border between Bohemia and Moravia with 50,000 inhabitants and is a main city of Vysocina region. The local authorities have decided to solve the problem with provision of social services for old people via a PPP project.

There are three main partners in the project:

- The city of Jilava,
- Private joint-stock company Korbada and
- Non-governmental organization, a provider of social services Tribarne DS terraces.

The project is based on three consistent contracts between the parties, all of which expired in 2008.

- Korbada established DS Tribarne terraces and invested property in the company.
- The municipality will pay for the provision of service for 20 years in the form of payment for availability (at a level comparable to the cost of the same service provided by other suppliers in similar institutions).
- The task of the private partner is to build, operate and maintain the property and provide all necessary services to the customers during the contract period.
- After 20 years, the municipality will become the owner of 100% of the Non-governmental organization and provider of social services DS Tribarne terraces.

The public service is for 20 years and must be provided by the private partner who also bears the risk for the availability, as well as the investment and operational risk.

## Cultural Centre Svitavy



Svitavy is a city in Eastern Bohemia with 20,000 inhabitants. It belongs to a group of more than 40 Czech cities with highly preserved historic centres.

The PPP project for the cultural center called "Fabrika" is based on a contract between the city of Svitavy and a "budget" organization from the public sector - Center for Cultural Services Svitavy. This is a non-governmental organization that was established by the municipality before the implementation of the project. All financial and contractual relations are governed by this organization.

The main objective of the project is to restore former industrial buildings in the preserved historic center. The former factory Vigona was transformed into a multifunctional educational and cultural center.

Before the start of the PPP project the buildings and the land were owned by a private company. The Municipality of Svitavy bought the property which was in very bad condition. This is also one of the conditions for financing from EU funds before the approval of the contract for the EU subsidy. There is also the precondition<sup>2</sup> that a contract for the entire project lifecycle should be concluded. The project complies with the Strategic Plan of Svitavsko micro-region, with the regional development program of Pardubice and with the National Development Plan.

The investment costs are covered by a combination of sources:

- 50% EU funds,
- 5% European Investment Bank,
- 10% Ministry of Regional Development,

• 35% Svitavy Municipality.

As the subsidies from the EU and EIB are provided after the completion of specific stages of construction, the municipality has taken a medium-term credit to cover the expenses during construction.

The part funded by the EU is actually three individual projects which are interrelated. All three projects are funded by the Joint Regional Operational Programme<sup>2</sup>. These are:

- a. Multipurpose Municipal Training Centre Fabrika (Priority 2 - Infrastructure for Regional Development, 2.3. Restoration and renovation of selected cities);
- b. Center for Development of Human Resources and Social Integration in micro-region Svitavsko (Priority 3 - Development of human resources in the region, 3.1. Infrastructure for Development of Human Resources);
- c. Development of the Information and Communication Technologies - establishment of an ICT Centre (Priority 2 - Infrastructure for Regional Development, 2.2. Development of the Information and Communication Technologies in the regions)

The tables give a brief description of the projects:

**Table 1: Municipal Multipurpose Training Centre**

PROJECT NUMBER		CZ.04.1.05/2.3.00.1/0649
Programming period		2004 – 2006
Name of programme		Joint Regional Operational Programme
Priority		Regional infrastructure development
Measure		Restoration and renovation of selected cities
Start		2004/11/01
Completion		2008/09/30
Applicant		Svitavy City
Brief description of the Project		Restoration of urban territory in the protected historic center of the city, conversion of former factory into a multifunctional building for training and community cultural center and reinstatement of related sites.
Budget	National public funds	30 439 250 CZK
	EU	91 317 750 CZK

**Table 2: Centre for human resource development and social integration in micro-region Svitavsko**

PROJECT NUMBER		CZ.04.1.05/3.1.00.3/0930
Programming period		2004 – 2006
Name of programme		Joint Regional Operational Programme
Priority		Development of Human resources in the regions
Measure		Infrastructure for human resource development
Start		2005/08/01
Completion		2008/07/31
Applicant		Svitavy City
Brief description		<p>Establishment of appropriate facilities for the activities of NGOs in the field of:</p> <ul style="list-style-type: none"> <li>- Active employment policy (retraining, people with disabilities),</li> <li>- Lifelong learning (training people from childhood to retirement age in order to improve knowledge, skills and qualifications by the principle of equal opportunities),</li> <li>- Social integration (in particular the unemployed, illiterate, low-skilled citizens, national and ethnic minorities, drug users, people on release from prison, etc.)</li> </ul> <p>The project is part of the goal of creating the community center Fabrika to resolve the systematic negative social trends in the micro-region, particularly the low level of education and economic activity, high unemployment, low income and negative demographic development.</p> <p>This is the second stage of the objective to create material conditions for activities such as:</p> <ul style="list-style-type: none"> <li>- City library</li> <li>- Centre for cultural services</li> <li>- Municipal chamber of commerce</li> <li>- University for elderly people</li> <li>- Centre for Maternity “Small Steps”</li> <li>- Centre for social services “Sylvia”</li> <li>- Club for people with disabilities</li> <li>- “Dazhori” programme for Roma mjinority.</li> </ul>
Budget	National public funds	2 200 540 CZK
	EU	6 601 620 CZK

**Table 3: Development of Information and Communication Technologies – establishing of ICT Centre**

PROJECT NUMBER		CZ.04.1.05/2.2.00.5/3119
Programming period		2004 – 2006
Name of programme		Joint Regional Operational Programme
Priority		Regional infrastructure development
Measure		Development of the Information and Communication Technologies in the region
Start		2006/07/01
Completion		2008/07/31
Applicant		Svitavy City
Brief description		The project aims to create high-speed and high capacity Internet connection with the multifunction municipal center Fabrika and to organize informational and cultural center with free Internet access, including Internet kiosk with permanent access.
Budget	National public funds	4 219 121 CZK
Budget	National public funds	1 280 000 CZK
Regional impact		16 municipalities in the region

It is very common that there are old and abandoned industrial buildings in modern cities near their central parts. These buildings differ from the urban landscape and often threaten people and the traffic around them. In eastern Bohemia there are about 600 of such industrial, agricultural and recreational buildings. The Svitavy Project Fabrika is a successful example of how this problem can become an advantage.

Once the necessary material conditions have been created, thanks to the European funds and national co-financing, the center provides space for the following activities:

- Public Library, including children and youth fund, a music section, reading room, ICT room - Internet access for library visitors.
- Internet access hall.
- Training centre for elderly people - Third Age University, study rooms for retraining, language training;

- Multi-purpose hall with 500 seats for seminars, conferences, concerts, theater, dances, public municipal sessions;
- Halls for artistic leisure activities;
- Rooms for NGO clubs;
- Rooms for the social services centre Salvia;
- Rooms for the Roma programme Dazhori;
- Rooms for business centre for small businesses (District Chamber of Commerce and Business information centre)
- Rooms for the municipal television;
- Rooms for commercial activities directly related to the functions of Fabrika (bookstore for used books, Internet cafe, restaurant)

More information is available on the Internet web-site of the Centre:

<http://www.fabrikasvitavy.eu/>

### **Aquapark Olomouc**



The city of Olomouc, with a population of 100,000 inhabitants is the center of Olomouc region in Moravia.

PPP project Aquapark Olomouc is based on a contract between:

- Olomouc Municipality and

- Private joint-stock company Aquapark Olomouc, with ownership as follows: 55% owned by the construction company and supplier + 45% owned by Olomouc

Parametres of the Project:

- Scheme Construction – Management – Transfer,
- Deliveries start in 2007, work starts from June
- Investment costs 20 million euros, financed by the private partner,
- The city of Olomouc invests land, project documentation and 1.3 million euros.

The aim of the Project is to provide public service in the field of leisure activities. With the decision of 25 July 2007 the Municipal Council of Olomouc grants concession for construction, financing and management of the aquapark to Consortium Atvanger, Gemo and Skanska. This is following a tender procedure, held for the period of one year<sup>2</sup>. After that decision, the negotiations continue until the autumn of 2007 and lead to the establishment of a joint stock company - Aquapark Olomouc, property of the abovementioned companies, which won the tender procedure. Finally, the contract between Aquapark Olomouc and the city of Olomouc is signed. The construction started in 2008 and the aquapark is opened on June 1, 2009.

The investment is 500 000 000 CZK (19.266 million euros) and the whole building is with an area of 33,000 square meters.

**Financial aspects:** the risk of the acquisition of financial resources is fully transferred to the private partner. Olomouc invests 1.3. million euros, land and project documentation at the value of 58 million CZK (2.081 million euros). The investment credit for the construction at the amount of 355 million CZK (13.7 million euros) is guaranteed via the assets of Olomouc Aquapark PLC. Olomouc municipality will annually increase its stake in the company and will contribute to the management expenses in the form of "service fee". The amount of the "fee for service" was one of the main criteria during the tender.

For more information <http://www.aqua-olomouc.cz/>

#### **Conclusion from Czech experience:**

Czech experts on PPP from the public and private sectors recently assessed the impact of the new legislation, which is in force since July 2006 (ITA and the CA) and compared it with the application of commercial and civil code.

The basic opinion of the experts is that the application of the law on concessions in respect of tenders for PPP aims to ensure that the municipality and the potential private partner work with relatively well prepared documentation and spend enough time and capacity during the preparation phase in order to protect themselves from serious problems in the future development of the project. On the other hand, this method is considered to be particularly complex and difficult to understand for the local municipalities and is inconvenient for them. On the contrary, tenders for PPP within the commercial and civil code have been assessed as very simple, not compelling for municipalities to make the necessary preparation for the project. The lack of an adequate preparation of the project for such a procedure may lead to very serious problems in later stages of the project, particularly due to the long-term nature of the project and the related long-term consequences after the initial decision. The usual procedure and preparation of the public sector also means less information and less certainty for the potential private partners and as a result fewer participants who are interested, which undoubtedly means a higher price for the public sector.

**Table 2: Main differences in the role of the municipal employees during the project cycle of a PPP project and during the traditional delivery of a public service**

<i>Phase/ Role of the municipal employees</i>	<i>Traditional provision of public service</i>	<i>PPP</i>
Economic assessment	<u>Assessment of the investment expenses</u> and initial operational expenses	<u>Assessment of the expenses for the whole project cycle</u> , test of economic assessment
Preparation of the Project	a) Preparation of technical and construction documentation (by definition of invested resources = parameters of the technical infrastructure necessary for future delivery of public services provided by the municipality) b) Preparation of the investment	By determining the results (parameters of public service to be provided by the private partner)



Tender procedure	<p>budget</p> <p>Usually 2-phase competition, the technical parameters of the infrastructure which will be built are defined before the tender and are binding on all candidates</p>	<p><u>Usually a dialogue for concession or a competitive dialogue</u> (a competition in 3 stages, stage of qualification, a dialogue, competition for a price), service parameters are fixed, the technical parameters of the infrastructure needed to provide a service are subject to a dialogue (second phase of the competition)</p>
Construction	<p>Regular payments for the appropriate parts of the infrastructure built</p>	<p>Няма плащания за частния партньор, общината покрива разходите за подготовка (за ръководителите на проекта, външни консултанти)</p>
Management and Monitoring	<p>Delivery of a public service by the team of the municipality</p>	<p>a) Monitoring of the compliance with the service, delivered with the contract</p> <p>b) Regular payments for the public service on the basis of a mechanism for payment and monitoring</p>

### 3.3.Examples from other Member States:

#### Slovenia:



#### **Urbanized green areas – Slovenia**

The Project is financed by the Municipality, under initiative of the EU INTERREG III B CADSES. ([www.greenkeys-project.net](http://www.greenkeys-project.net))

NOVA GORICA Municipality has a population of 20,000 residents. The municipality is located near the border with Italy. The climate is Mediterranean, which is a condition for all year round use of the green spaces.

The Municipality develops a strategy for the green areas - construction, management, planning, managing and shaping of the property (transfer from private to public ownership), establishment of a registry of green areas and categorization of the green areas.

The project includes construction of an urban park, children playgrounds, walkways, afforestation and improvement of security, etc.. A developed strategy is presented for discussion.

The maintenance of the green areas is assigned to a private company, the management and control is carried out by the administration of the municipality.

#### **Sports Complex (Sports Park Stožice) - Ljubljana, Slovenia**

The sports complex is the result of a PPP between the Ljubljana Municipality and Grep Company for the construction of the complex and the provision of management of part of the

public assets within 20 years, a concession agreement regulated under the Public-Private Partnership Law. The sports complex includes a football stadium, sports halls, a large shopping centre and a hotel part, water cascades, and a park. It is built on an area of 182,000 square meters, and it is currently the most attractive place for recreation and entertainment for the residents of Ljubljana

## **Portugal:**



### **Program for rehabilitation and social revitalization of the centre and the urban area of the city of Porto**

The program includes the implementation of a number of projects for the improvement and modernization of the physical infrastructure. For this purpose, in 2005 the municipality set up an administrative structure called PORTO Vivo - SRU (the legal form is a public company - 60% of the shares belong to the government, and the remaining 40% to the Municipality of Porto). The company is responsible for the rehabilitation and modernization of the urban environment and of the coastal zone. The newly established company has the following functions: rehabilitation of the urban area, economic revitalization, social reorganization, modernization of the infrastructure and management of the urban area. The company deals with the strategic planning and urban development, stimulating PPP.

The centre of the city of Porto integrates about 10 sq.m. of the old historic centre, which is a World Heritage with official classification, which is restored. A commercial area and an

entertainment centre were built in this part of town, which meets the requirements of the younger population of the city. In recent years this became necessary, especially with the construction of the typical for the urban environment *city malls* / centers, which create urban identity.

The Municipality directs its efforts towards more effective rehabilitation of urban areas in the central regions of the city. The project is long-term. It focuses essentially on the physical rehabilitation of the building groups in the central part of Porto, creating better living conditions and revitalizing of the social and economic dynamics on place.

- Improvement of the residential conditions of the inhabitants - central air conditioning, parking lots for residents, installation of mechanical lifts, as well as modernization of the building design.
- Attraction of technologically innovative companies,
- – To reap the benefits of various factors such as the historic heritage, river Douro; Creation of new commercial spaces and improvement of the existing,
- – the concentration of cultural sites is promoted by building a subway, creating better opportunities for mobility, by improving public transport.

The project started in 2005. The implementation of the activities for improvement of the urban environment was assigned to private sector partners. The administrative structure PORTO Vivo - SRU made the necessary feasibility studies, and a master plan was prepared. The public funds was insufficient for the rehabilitation of the urban environment. The method for solving a wide range of issues related to the physical, social and economic reinstatement of the center of Porto was by combining the efforts of the local administration and the local businesses.

In order to meet the objectives of the program and the implementation of the specific projects it is planned that they are implemented through a PPP between the company PortoVivo-SRU and private contractors specializing in rehabilitation, which will address the modernization of the buildings in the central part, as the management, the quality of the finished product and the profit will be pre-agreed.

### **Hospital Centre Kaskas, Portugal**

The hospital is located 30 km away from the capital Lisbon in Kaskas province. The new hospital DBFM combines the two hospitals "Condes de Castro Guimaraes" and the orthopedic hospital "Dr Antonio Jose de Almeida". The operator is "Gestao de Edificio Hospitalar and

HPP Saude - Parcerias Cascais". The project duration is 30 years. The construction of the hospital should be completed in 24 months.

The total value of the Project is 99.2 million euros. The hospital has poor financial results, which requires a new solution in order to maintain activity and the personnel. The new hospital has a capacity to serve 170,000 people from the province. The Government provides 409 million euros. In the Project the Ministry of Health of Portugal foresees two tenders to be made for the construction and maintenance of the infrastructure of the hospital and for clinical services. A specialized consortium will not be established. A PPP agreement under the law for PPP will be made with the companies which will be selected.

#### **IV. Conclusions:**

The decentralization as a process is characterized by transferring of more powers of local government to the public sector and in public services on part of the state. The local administration as a local authority is responsible to meet the quantitative and qualitative demand for public services, while respecting the principles of transparency and accountability for the cost of public projects and public services.

The presented experience of countries shows that PPP is used by local authorities as an approach for the improvement of the quality of public services with minimizing of the costs and better value for money.

The presented overview of the experience with the problems identified, and the solutions found, are grounds for concluding remarks for the future development of the concept of public-private partnership as an alternative mechanism for implementing the projects of local government of the municipality of Burgas.

Regardless of the autonomy and high degree of decentralization the shortage of public funds for public investment projects is a problem for the municipalities. The selection of municipalities is legally defined and limited financially, so municipalities use bank loans, debt instruments, private businesses by using different types of PPP.

In most countries worldwide, including Bulgaria, PPP covers a wide range of different structures where the private sector delivers a public product or service. In some countries there have been projects for transport and infrastructure based on concessions for many years, notably in France, Italy and Spain, with revenues collected from the end users through charges on road use. The main feature of PPP is that the return to the private sector is related to the results from the offered services and from the use of assets for the duration of the

contract. The private sector as a service provider and operator of public assets is not only responsible for the creation of the asset, but also for overall management and implementation of the project and its sustainability – i.e. it has to work successfully even after completion of the project.

The Municipality of Burgas faces the challenge to use the expertise and financial capacity of the private sector in the construction, maintenance and operation of public assets and services. The evaluation of the practice of using PPP demonstrates the importance of institutional and administrative capacity for the economic efficiency of public services.

In order for the projects initiated by the administration of the municipality to be successful it is necessary to distinguish clear and realistic objectives for PPP projects, to assess the demand for a public service and the degree of feasibility, yet at the stage of the feasibility study.

PPP projects are not unified and the local government faces the choice of "pragmatic" decision, i.e. the most cost-beneficial method for effective project implementation and social affordability of the public service price. Public services are a product that benefits the population and its quality is crucial, because local taxes and fees for citizens indirectly fund the public sector. The economic efficiency and social validity and quality are the arguments for PPP as a good approach for the delivery of public services (urban planning, public transport, recreational facilities, street lighting, health, education and social activities, etc.).

The analysis shows how important it is to identify the suitable PPP project:

- there should be a clear economic and social need of the PPP project
- political support;
- there should be a clear and reasonable payment schedule,
- it should be financially supported throughout the project life cycle;
- to ensure financial return
- social price that residents of the municipality can afford as pay and risk of the PPP project
- presence of a strong civil society in the subject matter of the PPP contract, that will be engaged as an active and full participant in the PPP project while ensuring the public nature of the service over time.

The advantage of PPP models is that there is a possibility for flexible planning and spending of public funds to achieve optimum results in the provision of public services of different character, development of infrastructure, as well as efficient use of public resources

(buildings, land) for development of new type of services, as well as for financial income and increase of the assets of the public sector. A key feature of PPP models is that the public partner does not lose property, but rather increases it at the end of the PPP project.

Therefore, It is necessary to establish a strategic communication plan, which is to be submitted to the civil community and to explain the necessity and benefits of public sector projects built through PPP. The municipal administration should assess the public and market interest for PPP.

### **What kind of tender procedure must be applied in terms of PPP?**

Based on Czech experience we could mention that the guiding principles that must be followed during the initial and tender stages of the project preparation are:

- a. To comply with EU legislation, to focus on aspects such as transparency, equality and non-discrimination, which are key in order for the municipality to have a sufficient number of candidates who meet the requirements of the municipality and provide value;
- b. To assess the aspects of the full project cycle and take them into account during negotiations;
- c. To include the administration of the municipality in the preparation and implementation of the tendering process, i.e. not just rely on external consultants; this is also a way for protection from unpleasant surprises in future regarding the public services, flexibility of contacts, transfer of risk and costs;
- d. Defining of key public services (which are to be provided by the private partner);
- e. To evaluate the future budgetary expenditure in the structure by years;
- f. To prepare a tender of 3 phases, including tender / concession dialogue which allows the municipality to exploit the innovative potential of the participants;
- g. To prepare the documentation for the tender in a structure which allows the project team of the municipality to compare the individual offers in a comprehensible and transparent manner.

In general, the Czech experience (and the experience of the other examined countries) does not offer advice about which legal contractual form is best for the PPP, since this depends on the type of the relevant public service, the degree of project development and on the ownership of the property which is necessary for the project.

## **Institutional issues and Project Management**

The institutional framework and management of each individual project is a key condition for its success. Some of these aspects act "chain" - if one unit is interrupted the whole project collapses. We have an interesting experience in the Czech Republic based on a number of pilot PPP projects:

In Czech Republic there is a felicitous example of a very well prepared pilot PPP project for a parking lot at the highest level of the state hospital building in Prague – *Nemocnice Na Homolce*. The project had to meet a priority of the hospital, which in all aspects was very well founded to provide a public service to the highest international standards. Everything went well and the project reached the stage where it had to be submitted to the Government for approval. The Project Manager at that time was the director of the hospital, who was a well known and respected Czech manager. There was only one weak link - the Ministry of Health did not support the Project, i.e. their attitude was "not engaging". The Project seemed undoubtedly successful until the team leader changed his job and became a manager of a private company, which was in no way related to *Nemocnice Na Homolce*. Two months later the Project was canceled. The reason is that the project has lost its actual leader and was unable to find another.

The subject of the institutional framework and the management can be divided into two issues: institutional and management structure = participants and their roles and the very process = individual stages of preparation and implementation of the project.

### **Participants and their roles**

With regards to the institutional framework is the Czech Republic has borrowed working models from Britain and creates an institutional structure that works. Three years after that its application by the Czech PPP community expressed the opinion that it must be changed. The most important participant in this structure is the contracting authority (the municipality) which is responsible for the specific public service provided to citizens. The other important participants in the PPP process are the external consultants, the Ministry of Finance, Ministry of Regional Development and the PPP Centre. It should be mentioned that this structure is considered best for the PPP, but like other project management structures it sometimes leads to misunderstanding and problems in the administrative structure for the specific city or central agency, as the civil servants work in a hierarchical structure, instead of by the principles of project management, which is horizontal in the administrative structure. This issue sometimes cannot be altered by any regulation, but primarily through education and



persuasion. Strong leadership and incentives for the staff working on the project in addition to their normal work can be of help to success.

It should also be stressed that in addition to a strong team leader, who chairs the board, the project manager is key to success. This is one of the prerequisites for successful PPPs and a major risk in terms of public authority. She / he must be someone who works constantly on the project and in Czech conditions. It does not matter whether the project manager is external or internal to the municipality, but this must be communicative creative person who can be relied on.

In addition, a good management of the consultants and close daily cooperation between the administration of the municipality and the external consultants is necessary.

How to prevent negative impact if the “individual units” and their critical impact on the progress of the project are interrupted? Based on the Czech experience the solution seems to be "the attitude to the project", which means that the project must not rely on the individual participants in the process, but must be considered as an important part of a broader program and should not be delayed or canceled if one or another important person leaves the team.

It is important for the Municipality to encourage and define clear and realistic objectives for its PPP projects. It should be started with projects which have a great chance for success and which are clear and applicable. There should be a clear procedure for consultation during the implementation of the project in order for any disagreements between the Government / Municipality (Employer) and the private contractor to be cleared. There should be a possibility for informal dialogues for any problems to be solved. It is necessary to create a strategic communication plan that explains the benefits of the PPP program and protect the project from negative criticism in the media. It is good to build market interest – the PPP framework and model should stimulate the interest of investors - information on the incentives offered by the Government to investors must be provided.

The contract between the municipal administration and the private partner is the basis for the regulation of business relations, the regulation of rights and responsibilities of countries participating in PPP projects (local government, private partner, a financial institution, etc.).

In the experience of countries a problem emerges that may occur and is more difficult to manage, particularly the balance of the project budget, revenues and economic returns.

The lack of experience with PPP projects among businesses in Bulgaria is the cause of uncertain and unconvincing attitude by many private partners. From experience in other

countries it is known that public administration should demonstrate its commitment to be leading and to open the public sector to participation of private partners and to generate trust. From the case studies in the report the most important steps in the life cycle of a PPP project can be summarized.

### **Preliminary phase**

This is the initial, crucial step in implementing any project, regardless of the type of agreement between the parties involved.

#### Preliminary study of a PPP project

- review of the experience and decision-making for the approach for the provision of public services and construction, exploitation of the public assets;
- formation of an effective mechanism by the local administration for the provision of public services, for management and control;
- the possibility for implementation; each project must meet the initial set of economic and political criteria such as: proven social or business needs to improve the quality or quantity of the infrastructure or service; assessment of the level of social sensitivity in the case of projects implemented on the basis of public-private partnership; development of various alternatives for PPP (technical, financial and managerial capabilities). Comprehensive knowledge of public administration for the expected output data / performance and opportunities for assessment and objective measurement of results.
- Compliance with the national priorities and the priorities of the EU;
- Compliance with the existing regulatory framework;
- research for the needs and the demand for a public service (market research).
- Public discussion;
- consensus at municipal council level;
- financial security (identification of sources of funding - the municipal budget, bank loans, debt instruments, private partner and SF).
- establishment of systems for monitoring and evaluation of the implementation of provision of services;
- Assessment of the level of the value of the fee or the cost of the public service, which will be paid to the private operator, to ensure a good return of the investment.

During this stage, the initiator of the project, i.e. the municipal administration has to determine the most important stages of the project (such as land acquisition, issuing of

permits, construction, operation, maintenance of infrastructure projects or staff training and quality assurance in the provision of services) in order to foresee the total duration and the necessary investments and to assess the compliance with a second set of technical and economic criteria such as:

- the economic scale and technical complexity of the project, while observing the whole life cycle
- opportunities for the private market to implement the project;
- proven economic sustainability of the project (*the costs are not as important, as the results*).

When assessing the alternatives the local administration, possibly supported by external consultants, develops

**for infrastructure projects:**

- a clear list of the necessary and existing studies of the developments, approvals and permits from public authorities
- a plan for land acquisition and the problems related to that (e.g. expropriations) of technical and legal aspects (e.g. availability and suitability of the land, ownership, restrictions imposed by the city plan)

**for projects for supply of services:**

- market research to determine the relation between price and quality
- comprehensive report for the legal restrictions related to the involvement of a private partner in the provision of services

The public administration must also prepare a risk assessment for the project.

In this stage, the local administration should make a decision on the scope of PPP projects, incl. on the services it wishes to offer in the partnership with the private sector. Therefore, the methodology for selection should be based on a wide and complex range of criteria used, such as the financial criteria (services that require significant investments or major costs for their provision); criteria for the quality level of the services provided (services that are new or abandoned and services whose quality is subject to improvement); social criteria (services with a significant social impact).

**Preparation and conduct of a tender procedure**

During this stage, the public administration should, among with other issues:

- Finalize the tender documents,

- Publish the announcement for the tender and be ready to accept and answer questions for clarification from the participants,
- Assess the received proposals,
- Negotiate, finalize and sign the contract.

### **Award process**

The selection of the most advantageous proposal is often a difficult task, since some of the submitted proposals appear very similar in terms of technical and in financial conditions. It is important for the bid specification to be clear, and that it does not contain ambiguities and uncertainties in order for the suitable partner to be selected.

### **PPP Contract Management**

Both parties (local administration and businesses) must implement their management responsibilities as set out in the Contract, allowing some flexibility necessary to adapt the partnership to changing economic and legislative environment and unforeseen events.

The local administration has to create a team, which must have the potential to manage and supervise the contract.

Another important recommendation is to expand the knowledge and experience of the local administration on project management. PPPs require a strong public sector that can take a new role with new capabilities. In particular, PPP systems require professional managers who not only know how to create partnerships and to manage a group of individual partners, but are also experienced in negotiations, contract management and risk analysis. The requirement for the private sector to provide service puts more responsibility in the hands of public administration.