



Crna Gora

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Ministry of Economy

**CONCESSION ACT FOR AWARDED CONCESSIONS FOR  
EXPLOITATION OF WATER COURSES FOR CONSTRUCTION  
OF SMALL HYDRO POWER PLANTS IN MONTENEGRO**

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## **INTRODUCTION**

Pursuant to the Law on Concessions (Official Gazette of Montenegro 08/09) and based on the Energy Development Strategy of Montenegro by 2030 – White Book, and the National Action Plan for usage of energy from renewable resources until 2020., the Ministry of Economy of Montenegro has prepared the Concession Act for awarding concessions for exploitation of water courses for the construction of small hydro power plants in Montenegro (hereinafter referred to as: the Concessions Act). In the Concession Act, the public notice and the Tender Dossier, the term exploitation of water courses shall mean technical and economic use of energy potential of water courses for generating electric energy.

The objective of the public competition is the selection of the most advantageous tenders for the construction of small hydro power plants in Montenegro for the purpose of exploitation of energy potential of water courses. Concessions are awarded through public competition under an open procedure (hereinafter referred to as: the public competition), as prescribed by the Law on Concessions.

A Tenderer shall submit offers under the public notice for award of concessions for the use of water courses for construction of small hydro power plants. The deadline for submission of bids shall be 4 (four) months from the date of announcement of public notice in the "Official Gazette of Montenegro". The Tenderer shall be obliged to submit a preliminary design for the use of water courses, and other documents specified by the public notice. The Tenderer whose tender is evaluated as the most advantageous one shall be proposed for the Concession Holder for the respective water course.

The subject matter of the concession is the design, construction, exploitation and maintenance of small hydro power plants at the water course. The Tenderer shall submit tenders for individual water courses, maximum for 2 water courses of total number of 3, for which concession shall be awarded.

Water courses have been selected based on hydrological measurements and surveys at particular micro locations of water courses, performed by the Institute of Hydrometeorology and Seismology of Montenegro (HMSMNE). According to the hydrological measurements and surveys, the total possible installed power at water courses is 7.2 MW, with estimated total annual generation of electricity of 30,9 GWh.

The small hydro power plant structures at respective water courses have been recognized by existing drafts of local planning documents. Also, framework solutions have been offered for connecting structures of small hydro power plants to the electric energy system of Montenegro by the Electric Power Company of Montenegro AD Niksic.

## 1. DESCRIPTION OF THE SUBJECT MATTER OF CONCESSION

The subject matter of the concession is the design, construction, exploitation and maintenance of small hydro power plants at water courses from Table 1. Designing implies development of technical documents and all necessary surveys until the issuance of construction permit; construction implies the construction of structures of small hydro power plants (hereinafter: sHPP) until the issuance of exploitation permit; exploitation implies technical and economic exploitation of energy potential of water courses for generation of electric energy. Small HPPs are structures of installed power up to 10 MW as defined by the Energy Law ('Official Gazette of the Republic of Montenegro', 28/10, 40/11, 06/13 and 10/15). A water course implies the basin of running water together with its banks, i.e. a cavity in the ground, which is clearly visible, with water running through it continuously or occasionally (Law on Waters, 'Official Gazette of the of Montenegro', 27/07, 32/11, 47/11).

A list of water courses, basins that the water courses belong to, and preliminary data on theoretical power and annual generation of electric energy at water courses are presented in Table 1.

Table 1: List of water courses where concession activities will be implemented

Number	Water course	Basin	Municipality	P [MW]	E [GWh]
1	Bukovica	Komarnica	Šavnik	3.2	14.2
2	Ibrištica	Morača	Kolašin	3.1	13.8
3	Štitarička	Tara	Mojkovac	0.9	2.9

**Note:** Water course Ibrištica is chosen based on interest of the investors. Baring in mind that the water course Ibrištica belong to basin of Morača, the Concession Holders will accept the risk of sinking of sHPP due to possible construction of HPP Morača.

Table 1 presents:

- P – theoretical power of the water course;
- E – theoretical annual generation of electric energy at the water course;

The data about estimated power and annual generation of electric energy at individual water courses are obtained based on the following studies:

- Hydrological assessment for profiles of sHPPs at tributaries of main water courses in Montenegro, Hydrology Sector, HMSMNE, 2007;
- Preliminary (rough, approximate, provisional) assessment of hydro potential of tributaries of main water courses of Piva and Lim, small, minimal or micro (sHPPs) power plants in Montenegro, Hydrology Sector, HMSMNE, 2008;
- Hydrological assessment for profiles of sHPPs at tributaries of main water courses in Montenegro, Hydrology Sector, HMSMNE, 2009.

The hydrological estimation was performed based on annual surveys and hydrometric measurements. The hydrometric measurements have been performed on previously defined places at water courses, hereinafter referred to as micro locations. The measurements were used to create curves of flow and to calculate mean daily flows for the surveyed period and the curve of duration of mean daily flows. Also, curves have been created for duration and frequency at micro locations, and the curves of duration and frequency have been corrected against decades of hydrological measurements in Montenegro. More details on offered water courses, with maps of basins, physical and geographic details on basins, physical and geographic maps of the basins, longitudinal sections of water courses are presented in the “Hydrological estimation of profiles of small (mini, micro) hydro power plants (sHPPs) at tributaries of main water courses in Montenegro”.

The processed hydrological data were used to prepare a preliminary study of hydro potential of water courses. Potential micro locations have been selected, which offer possibilities for technical and economic exploitation of the respective water courses, and based on this choice, installed power of facilities have been recommended and possible annual generation of electric energy calculated. Based on described measurements and surveys, Table 1 gives preliminary assessments of installed power and annual generation of electric energy at water courses. Named studies are integral parts of the Tender Dossier.

The locations where concession activities will be implemented are the water courses hydrologically surveyed by the HMSMNE, where hydrological estimations have been performed at micro locations of water courses, selected by the HMSMNE as well. The micro locations at which concession activities will be implemented may be in other locations along the water courses, depending on the concept of the preliminary design which offers optimum technical and economic exploitation of water courses, in compliance with spatial and ecological limitations. The clearly defined borders of locations within which implementation of concession activities is planned, with the length and gross drop of water courses, are presented in Table 2.

Table 2: Water courses or locations where concession activities will be implemented

Number	Water course	Length of the course [km]	Gross drop of the water course [m]	Fountain height [m.a.s.l.]	Mouth height [m.a.s.l.]
1	Bukovica	20,10	490	1440	950
2	Ibrištica	7,20	1096	1350	254
3	Štitarička	14,48	922	1760	838

These studies create a valuable starting point for hydrological plans, and the starting point for the preparation of necessary technical documents, but do not offer a guarantee for the investors based on which they have the right to claim any damage compensation.

These measurements do not exclude the possibility and/or the need for the Tenderer to conduct own surveys. If the Tenderer thinks that the hydrological surveys of water courses performed by the HMSMNE are insufficient or inadequate from the point of view of optimum energy, economically and ecologically acceptable exploitation of water courses, the Tenderer shall be given a possibility to submit the results of own surveys which the concept of the preliminary design will be based on. The tenderer can perform the aforementioned measurements on the basis of a license granted in accordance with

regulations issued by the Ministry of Economy or may perform their own measurements, which must be confirmed by the competent institution for the hydrological analysis in Montenegro.

## **2. BASIC PARAMETERS FOR ASSESSMENT OF ECONOMIC FEASIBILITY OF INVESTMENT**

Economic and financial analysis and financial means needed for the construction of sHPPs are presented in the Strategy for Development of Small Hydro Power Plants in Montenegro. Based on this Strategy, a preliminary economic and financial analysis has been conducted for the evaluation of projects of sHPPs on water courses, i.e. at location where concession activities will be implemented, by using the software RETScreen International Clean Energy Project Analysis.

The analysis offers certain initial assumptions in terms of certain technical, economic and financial parameters:

- Technical parameters in a simplified energy model are determined based on data on estimated power and annual generation of electric energy at respective water courses, which are presented in the studies conducted by the HMSMNE. Annual time of operation at maximum power is calculated as the ratio of planned generation of electric energy and installed power presented in Table 1.
- A rough estimate of specific investment in the construction of facilities of sHPPs is amounts to 1.500.000 € per MW of installed power (applicable to all structures). Annual operational costs and maintenance costs are estimated at 4 % of the total investment. Additional investments in infrastructure and connection of sHPPs to distribution system have not been analysed separately.
- Purchase price of electrical energy generated in sHPPs is defined in a way that incentive price of electrical energy is paid in the first 12 years, and after that period, purchasing continues at market prices. The incentive price of electrical energy generated in sHPPs on water courses on which concession activities will be implemented is defined by the Energy Law and the Regulation on Tariff Systems for establishing incentive prices of electrical energy from renewable energy sources and highly efficient cogeneration (Official Gazette of Montenegro 52/11 and 28/14).

The market purchase price is defined to be the price of electrical energy from local sources for the third year of the regulatory period (01.08.2014 – 31.12.2015) in the amount of 36,9744 €/MWh, which is established by the Decision of determining price of electric energy from domestic resources for delivery on defined tariffs, adopted at session of the Board of the Energy Regulatory Agency held on 1 July 2014.

It is estimated that 30% of own funds will be used for financing of projects, whereas 70% will be provided by credits provided by financial institutions. The credit interest rate is assumed at 8% and the credit period of 10 years. The discount rate is defined to be the same rate as for the credit, 8%. Inflation rate is defined to be 3%, which also applies to the increase of purchase price.

The period of 30 years is taken to be the life cycle of the project. The time needed for designing and construction of sHPPs has not been analyzed.

In addition to the above assumptions, preliminary results of the economic and financial analysis for every water course individually are presented in Table 3. The presented data show that internal recovery rate for the planned period of technical and economic exploitation of sHPPs ranges between 32,7 % and 35,6 %. Also, the period of recovery of own investments (30% of total investment), from the commissioning of sHPPs, is 3,0 to 3,2 years. Given that the planned duration of the concession is 30 years, the presented economic and financial analyses show that the investments in the construction of structures of sHPPs at water courses are profitable. Also, favourable economic environment has been created for the construction of sHPPs in Montenegro and it is expected that investors will recognize this fact in the forthcoming tender.

It is important to point out that the presented results of the economic and financial analysis offer only provisional, approximate assessment of economic feasibility of the investment. Numerous assumptions put in place may affect the end result of the analysis of profitability of the investment. These assumptions include: annual time of operation at maximum power as calculated based on hydrological measurements and surveys conducted by the HMSMNE is considered rather high for Montenegrin water courses; concession fees and other fees have not been considered, or the solution to property-legal relations in the concession area, additional investments in the infrastructure, which are necessary for integrating sHPPs into the system, guaranteed biological minimum flow downstream from the water intake and water courses etc.

The presented economic and financial analysis does not offer a guarantee to investors based on which they have the right to claim any damage compensation, but the Tenderer shall assume the whole risk when submitting the Tender.

Table 3: Preliminary economic and financial analysis of feasibility of the construction of small HPPs on respective water courses

No	Water course	P [MW]	E [GWh]	$t_k$ [h]	$C_k$ [%]	$V_i$ [€]	$O_t$ [€]	$Tr_{god}$ [€]	$Pr_{god}$ [€]	IRR (%)	$t_{pov}$ (god)
1	Bukovica	3.2	14.2	4438	50,7	4.800.000	192.000	692.739	1.146.384	35,1	3,0
2	Ibrištica	3.1	13.8	4452	50,8	4.650.000	186.000	671.091	1.116.720	35,6	3,0
3	Štitarička	0.9	2.9	3222	36,8	1.350.000	54.000	194.833	302.760	32,7	3,2

The following codes are used in Table 3:

- P [MW] - Theoretical power at the water course;
- E [GWh] - Annual generation of electric energy at the water course;
- $t_k$  [h] - Annual operation time at maximum power;
- $C_k$  [%] - Factor of capacities (use of plants at maximum power);
- $V_i$  [€] - Value of investment;
- $O_t$  [€] - Operation and maintenance costs;
- $Tr_{god}$  [€] - Annual costs;
- $Pr_{god}$  [€] - Annual income;
- IRR [%] - Internal recovery rate, and
- $t_{pov}$  [god] - Investment recovery time.

### **3. TENDER DOSSIER**

The data needed, conditions for awarding concessions, and prescribed rights and obligations of the Tender and the Concession Holder are defined by the Tender Dossier which includes:

1. Concession Act;
2. Public Notice;
3. Tender Documents and
4. Accompanying technical documentation

Concession Act defines the procedure, contains data, information and analysis related to the awarding of concessions for exploitation of water courses for construction of small hydro power plants in Montenegro. This document defines the activities of the tenderer during the tendering process, as well as the obligations to be met by the concessionaire during the performance of concession activities.

Tendering process shall start by announcing a public notice in the Official Gazette of Montenegro, on the website of the competent authority, in one national print media, as well as in a representative international economic media.

Tender Documents shall include:

- Instructions to prepare Tenders (with the application form and the form of bank guarantee offers) and
- Draft Concession Contract (the form of bank guarantee for good business performance).

Tenderers who wish to participate in the public competition must first purchase the Tender Documents from the competent authority (the Ministry of Economy). The competent authority reserves the right to, prior to the expiration of deadline for submission of bids, amend and / or supplement the Tender Documents.

Accompanying technical documentation shall include:

- Hydrological assessment for profiles of sHPPs at tributaries of main water courses in Montenegro, Hydrology Sector, HMSMNE, 2007;
- Preliminary (rough, approximate, provisional) assessment of hydro potential of tributaries of main water courses of Piva and Lim, small, minimal or micro (sHPPs) power plants in Montenegro, Hydrology Sector, HMSMNE, 2008;
- Hydrological assessment for profiles of sHPPs at tributaries of main water courses in Montenegro, Hydrology Sector, HMSMNE, 2009;

- Technical recommendations for connection to electricity distribution system by the Electric Power Company of Montenegro AD Niksic, functional Distribution Unit;
- Technical recommendations for connection to electricity distribution system by Electroinstitute Milan Vidmar.

Accompanying technical documentation shall be announced on website of the Ministry of Economy [www.mek.gov.me](http://www.mek.gov.me) and website of renewable energy sources [www.oie-res.me](http://www.oie-res.me).

The deadline for submission of bids shall be 4 (four) months from the date of announcing Public notice in the "Official Gazette of Montenegro".

#### **4. CONCESSION FEE**

The concession fee shall be fixed and amount to 6.5% of the achieved annual generation in sHPPs provided that such amount shall not be less than 5% of planned generation presented in the preliminary design of the Tender submitted by the Tenderer. The fee shall be paid in amount of 6.5% of achieved annual generation in sHPPs, i.e. 5% of estimated generation presented in preliminary design of the Tender submitted by the Tenderer, depending on which one of two amounts is higher in a given year.

The above percentages of annual generation shall be calculated into the amount of money based on applicable purchase price of electrical energy generated in sHPPs, and allocated to the state and local budgets in the way defined by the Law.

The percentage of average generation of sHPPs which is annually allocated for the concession fee shall be an integral part of the Concession Contract planned as a fixed percentage that the Concession Holder gives to the concedent. The fee shall be calculated in euro at annual level based on the report on achieved annual generation that the Concession Holder shall submit to the concedent and accruals made by Concession Holder.

A possibility for alignment of the amount of the concession fee with estimated generation from innovated preliminary designs shall be defined in more detail by the Concession Contract.

#### **5. DURATION OF CONCESSION**

The duration of the concession for all water courses is 30 years. This period shall be calculated from the day of creating of all necessary conditions for applying for the issuance of urban planning and technical requirements. The duration of the concession shall be an integral part of the Concession Contract and the Concession Holder shall be obliged to align his design with this period.

The period for which the concession is awarded has been defined based on the indicators of economic and financial analysis, public interest for the purpose of optimum exploitation of

energy resources and the Concession Holders' interest in terms of generating income from hydro energy facilities.

The concession for the respective water course may be extended after the expiry of original contract period, in accordance with the Law and regulations governing this sector.

## **6. CONDITIONS FOR SUBMITTING TENDERS**

In order to participate at the public competition, a Tenderer must meet obligatory conditions relating to:

1. the Tenderer's eligibility
2. tender security

### **6.1. Tenderers' Eligibility**

A local or foreign business organisation or other legal entity, entrepreneur or natural person, a consortium or some other form of business association which meets the conditions that prove eligibility to participate shall have the right to participate at the public competition for awarding concessions for exploitation of water courses for construction of sHPPs.

Pursuant to Article 23 of the Law on Concessions the following shall be considered as ineligible to participate in a public competition for concession award:

- business organisations, other legal entities and entrepreneurs against which bankruptcy or liquidation procedure was initiated, except for the reorganization procedure in line with the law governing insolvency of business organisations;
- business organisations, other legal entities, entrepreneurs, and natural persons that were convicted by a final judgement for a crime in performance of the professional activity; and
- business organisations, other legal entities, entrepreneurs, and natural persons that have unsettled tax liabilities and liabilities arising from penalties pronounced in criminal or misdemeanour procedure in a period of at least three years prior to publishing of the public notice.

**Note:** A consortium shall be obliged to provide evidence of eligibility of the Tenderer for every member of the consortium individually.

### **6.2. Tender security**

Pursuant to the Law on Concessions a Tenderer shall be obliged to submit, along with the tender, evidence on monetary deposit payment or a bank guarantee, as the Tender security.

**Note:** Tenders, submitted by tenderers which fail to provide the abovementioned obligatory conditions for tendering, shall be rejected as non-compliant.

## 7. CRITERIA FOR SELECTION OF THE MOST ADVANTAGEOUS TENDER

A Tenderer may, independently or as a member of a consortium, apply for maximum 2 water courses presented in Table 1. The Tenderer may, independently or as a member of a consortium, submit only one Tender for the same water course.

Tenders shall be evaluated and ranked based on the criteria for selection of the most advantageous Tender. The ranking list of Tenderers shall be prepared separately for every water course. The Tender must include the documents listed in Chapter 8 “Documents needed for submitting Tenders”. The criteria for selection of the best Tender are presented in Table 4.

Table 4: Criteria for selection of the best Tender

Number	Criterion/sub-criterion	Points
1.	<b>Previous experience in managing hydro energy facilities</b>	<b>30</b>
2.	<b>Financial capacity</b>	<b>30</b>
3.	<b>Technical solution</b>	<b>20</b>
3.1	Installed power of small HPPs	8
3.2	Annual generation of electric energy at sHPP's gate	12
4.	<b>Experience in the local market</b>	<b>12</b>
5.	<b>Multipurpose solutions</b>	<b>8</b>

**Note:** The number of points under every criterion or sub-criterion shall be rounded off to the first decimal.

### ***DESCRIPTION OF SCORING***

#### **1. Previous experience in managing hydro energy facilities**

Points under this criterion are allocated based on the Tenderer's previous experience in managing hydro energy facilities. The Tenderer must prove that the hydro energy facilities for which previous managing experience is being reported for are, or were, in his ownership and that he has, or had managerial control over them (directly or indirectly, through a dependent entity in which the Tenderer has minimum 51% of ownership of the capital and management control).

The number of points under this criterion quantifies the Tenderer's experience in managing hydro energy facilities. The Tenderers who have managed hydro energy facilities of the total capacity exceeding 100 MW shall be awarded with maximum number of points. Other Tenders shall receive the number of points proportional to the square root of the ratio of the coefficient of the respective Tender  $K_p$  and the highest coefficient  $K_{max}$ , i.e. the coefficient of the Tender with the highest installed power, i.e. the coefficient calculated for the installed power of 100 MW in case of Tenders with capacities exceeding 100 MW:

$$Num.of\ points = 30 \times \sqrt{\frac{K_p}{K_{max}}}$$

where:

$K_{max}$  – Tender with the highest coefficient  
 $K_p$  – coefficient of the respective Tender

The coefficient takes into account all hydro energy facilities managed by the Tenderer and represents a sum of installed power of all facilities, where the installed power of sHPP ( $\leq 10$  MW) are previously exponentiated with the superscript 1.5, whereas the installed power of all HPPs ( $> 10$  MW) is multiplied by  $10^{0.5}$ . Installed power is expressed in MW.

Coefficients  $K_p$  and  $K_{max}$  are calculated based on:

$$K = \sum_{j=1}^{j=n} P_{i,j}^{1.5} \times n_j + 10^{0.5} \times \sum_{k=1}^{k=m} P_{i,k} \times n_k$$

where:

$j$  – j-th sHPP ( $\leq 10$  MW) managed or being managed by the Tenderer  
 $k$  – k-th HPP ( $> 10$  MW) managed or being managed by the Tenderer  
 $P_{i,j}$  – installed power of j- sHPP managed or being managed by the Tenderer  
 $P_{i,k}$  – installed power of k- HPP managed or being managed by the Tenderer  
 $n_j$  – number of sHPPs of installed power  $P_{i,j}$  managed or being managed by the Tenderer  
 $n_k$  – number of HPP of installed power  $P_{i,k}$  managed or being managed by the Tenderer

## 2. Financial capacity

Evaluation of financial capacity of the Tenderer is defined based on average total gross profit generated by the Tenderer in the last three financial years. The Tender with the highest average gross profit in the last three financial years shall be given maximum number of points under this criterion. The remaining Tenders shall be given the number of points proportional to the ratio of the respective Tender and the Tender that was given maximum number of points. The method of allocation of points under this criterion is presented in the formula below:

$$Num.ofpoints = 30 \times \frac{P_p}{P_{max}}$$

where:

$P_{max}$  – Tender with the highest average total gross profit in the last three financial years  
 $P_p$  – coefficient of the respective Tender

If a consortium is the Tenderer, financial capacity of the member identified by the consortium shall be scored.

For the Tenderers registered within a period shorter than the last three years, an average shall be defined based on the number of years of business, with one year of business being a mandatory minimum.

### 3. Technical solution

The preliminary design for exploitation of the respective water course for construction of a sHPP shall be based on prior surveys of the locations and hydrological plans. Technical parameters of the preliminary design must be optimized for the purpose of realistic exploitation of the water course for generation of electrical energy. Points under this criterion shall be given for: the installed power of sHPP and annual generation at sHPPs' gate.

#### 3.1 Installed power of sHPP

Maximum number of points under this sub-criterion shall be given to the Tender with the highest planned installed power in the facilities of the sHPP on the respective water course expressed in MW. Other Tenders shall be given the number of points proportional to planned installed power compared to the Tender with the highest planned installation power. The method of allocation of points under this sub-criterion is presented in the formula below:

$$Num.ofpoints = 8 \times \frac{P_p}{P_{max}}$$

where:

$P_{max}$  – Tender with the highest planned installed power in the facilities of sHPP  
 $P_p$  – respective Tender

If the preliminary design envisages more than one sHPP on the respective water course, the installed power shall be calculated as the sum of installed power of all proposed power plants.

### 3.2 Annual generation of electric energy at sHPP's gate

Maximum number of points under this sub-criterion shall be allocated to the Tender with the highest planned annual generation of electric energy at sHPP's gate expressed in GWh. Other Tenders shall be given the number of points proportional to the planned annual generation of electric energy compared to the Tender with the highest annual generation. The method of allocation of points under this sub-criterion is presented in the formula below:

$$Num.of\ points = 12 \times \frac{P_p}{P_{max}}$$

where:

$P_{max}$  – Tender with the highest planned annual generation of electric energy at sHPP's gate

$P_p$  - respective Tender

If the preliminary design envisages more than one sHPP on the respective water course, the planned annual generation shall be calculated as the sum of planned generation of all proposed power plants.

### 4. Experience at local market

Points under this criterion are allocated based on complex structures constructed in Montenegro. Complex structures are considered to be the structures whose construction costs exceeded 500.000,00 EUR: electrical energy structures, industrial structures, water management structures, water supply systems, sewage, and other infrastructure facilities, as well as roads, ports, airports, railways, bridges, tunnels, residential and business premises with more than four floors, or of the surface exceeding 2000 m<sup>2</sup>. Points are allocated in the way that 2 points are allocated for every complex structure where the Tenderer acted as an investor or main contractor. Maximum number of points under this criterion shall be allocated to the Tender which refers to the structure, submitted by the Tenderer who acted as an investor or main contractor for the construction, with construction costs exceeding 6 million EUR.

Also, maximum number of points shall be allocated to the Tender submitted, independently or in a consortium, or by the local self-government on which territory the respective water course is located.

### 5. Multipurpose solutions

Multipurpose solutions for water courses relate to additional activities which shall be implemented in the surrounding of sHPPs. These activities represent an additional part of the preliminary design which provides additional economic development of the respective micro location, in addition to energy development. Offered multipurpose solutions must correspond to real natural capacities of the location. Characteristic activities of additional, i.e. multipurpose use of the location shall include:

- irrigation and water supply (population and/or industry);
- structures of importance for the development of local tourism;
- activities important for the development of agriculture;
- activities related to fishery development;
- sports-recreational facilities, and
- other economic structures, etc.

The concept of multipurpose solution shall be submitted in the form of a separate design, with clearly defined activities and budget.

If the location of the water course does not provide for development of a multipurpose solution, the Tenderer may submit a design for the development of energy efficiency measures at local level for the municipality where the respective water course is located. The proposed measures must comply with the municipality's plans in the field of energy efficiency. The proposed energy efficiency measures at local level shall be submitted in the form of a separate design, with clearly defined activities and budget. The activities defined in the design of energy efficiency measures must be implemented prior to commissioning of SHPP.

The method of allocation of points under this criterion is presented in the formula below:

$$Num.of\ points = 8 \times \frac{P_p}{P_{max}}$$

where:

$P_{max}$  – Tender with the highest design budget  
 $P_p$  – respective Tender

Tender Committee shall evaluate a possibility for implementation of proposed multipurpose solutions, i.e. energy efficiency measures at local level.

**Note:** Criteria no. 3 (Technical Solution) is necessary, that is the tenderer is obliged to submit the documentation for mentioned criteria, so that the offer could be considered. Also, the tendered is obliged to submit the documentation for at least one of criterias no. 1 or no. 2 (Previous experience in managing hydro energy facilities and Financial capacity). The tenderer freely chooses will he apply for both or one of mentioned criterias, but is obliged to submit documentation for at least one, in order to have its offer considered. Other criterias are optional.

## 8. DOCUMENTS NEEDED FOR TENDERING

The documents needed for bidding refer to Conditions for Tendering, described in Chapter 6, and the Criteria for selection of the most advantageous Tender, described in Chapter 7. The documents shall serve as evidence of fulfilment of these conditions and criteria.

If the documents of the Tender are submitted in a foreign language, the Tenderer shall enclose certified translation into Montenegrin language. In case of a dispute, the certified translation shall be used for interpretation of information and evidence.

Complete documents of the Tender shall include:

1. Documents need as evidence of fulfilment of obligatory Conditions for Tendering, and
2. Documents needed as evidence of fulfilment of the Criteria for selection of the most advantageous Tender.

### ***8.1. Documents needed as evidence of fulfilment of Conditions for Tendering***

#### **8.1.1. Application form No 1**

#### **8.1.2. Documents needed as evidence of Tenderer's eligibility**

Based on the requirements prescribed by the Law on Concessions, every Tenderer must submit the following evidence in order to prove eligibility:

- excerpt from the court, or other relevant state register in which the Tenderer has an office;
- if the Tenderer is a consortium, Consortium Contract or other form of association;
- evidence that a bankruptcy or liquidation procedure has not been initiated against a business organisation, other legal entity and entrepreneur – evidence/certificate is issued by the Commercial Court;
- evidence that a business organisation, other legal entity, entrepreneur, and natural person has not been convicted by a final judgement for a crime in performance of the professional activity – evidence/certificate issued by the Central Registry for business organisations, other legal entities and entrepreneurs, and evidence/certificate for natural persons issued by the Basic Court;
- evidence that a business organisation, other legal entity, entrepreneur, and a natural person has settled tax liabilities – evidence/certificate issued by a tax administration authority;
- evidence that a business organisation, other legal entity, entrepreneur, and natural person does not have unsettled liabilities arising from penalties pronounced in a criminal or misdemeanour procedure in a period of at least three years prior to publishing of the public notice:
  - ✓ Tenderer as a business organisation, other legal entity and entrepreneur shall submit:

- evidence/certificate issued by the Central Registry of Business Organisations proving that the Tenderer is not in the criminal record thereof;
  - evidence/certificate issued by the local offence authority from the place where the head office of the Tenderer is located, or of the competent authority, proving that the Tenderer has no unsettled liabilities arising from penalties pronounced in misdemeanour procedure;
- ✓ a natural person as the Tenderer shall submit:
- evidence/certificate issued by the Ministry of Justice proving that the Tenderer has settled liabilities arising from penalties pronounced in criminal procedure;
  - evidence/certificate issued by the Ministry of Justice proving that such person has no unsettled liabilities arising from penalties pronounced in misdemeanour procedure.

**Note:** The above evidence may not be issued more than ninety (90) days prior to the day of publishing of the public notice. If the country where the head office of the Tenderer is located does not issue the above evidence, such evidence may be replaced by the tenderer's statement under criminal and material liability, or if the country where the head office of the Tenderer is located does not have legal provisions in place relating to statements under criminal and material liability, they can be replaced by a statement given before competent court or administration authority or a notary.

### **8.1.3. Documents needed as evidence of Tender security**

A bank guarantee or proof of paid money deposit in amount of 25.000,00 EUR for the period defined by the public notice shall be submitted as evidence of the Tender security. The bank guarantee/money deposit shall be submitted for every Tender, i.e. every water course separately.

## ***8.2. Documents needed for evaluation of the criterion for selection of the most advantageous Tender***

Based on the criteria described in Chapter 7, the documents needed for selection of the most favourable Tender shall include:

### **8.2.1. Application form No 2**

### **8.2.2. Documents as evidence of previous experience in managing sHPP**

- Concession Contract or other evidence of acquisition of the right to manage sHPP;

- Excerpt from the official Registry of Business Organisations or other form of official certificate confirming ownership and that the applicant has managed sHPP; and
- evidence of installed power of the sHPP that the Tenderer managed: exploitation permit, certified as-built drawings, etc.

### **8.2.3. Documentation as evidence of financial capacity**

- evidence that payments to the Tenderer have not been suspended – appropriate bank statements, or other statement of financial eligibility of the Tenderer;
- report on accounting and financial capacity – income statement and balance sheet, along with the report of authorized auditor, for legal entities having a legal obligation to do so, for the last three years, i.e. from the day of registration of the legal entity if registered later.

### **8.2.4. Documents as evidence of proposed technical solution**

- Preliminary design of sHPP prepared in accordance with the Instructions to prepare Tenders and the Concession Act.

### **8.2.5. Documents as evidence of experience at local market**

- List of reference projects implemented in the local market; and
- Evidence on constructed complex facilities in the local market with indicated price of construction: exploitation, implementation contract, an excerpt from the relevant register of real estate and other documentation proving experience in the construction of complex facilities.

### **8.2.6. Documents as evidence of proposed multipurpose solution or energy efficiency measures**

- Project of multipurpose solution or the project of energy efficiency measures at local level with clearly defined project activities, deadlines and budget.

**Note:** Documents under 8.2.4 is obligatory for allocating points to tenders. Offers not containing these documents are incomplete and shall not be scored. Documents under 8.2.2. and 8.2.3. are optional, i.e. Tenderer is obliged to apply for at least one of these two criterias. The offers not containing one of these two criterias will be incomplete and will not be considered.

On the request of the Tender Commission, Tenderer shall be obliged to submit clarification of the Tender for the purpose of clarification of unclear parts thereof, but may not change or amend the submitted Tender.

### **8.3. Description of documents**

#### **8.3.1. APPLICATION FORMS**

Two filled application forms in the form provided in Annex to the Instructions for Tendering shall also be integral parts of the Tender. Annexes must be signed by an authorized person of the Tenderer.

Forms to be submitted are:

- Application Form No 1 as a part of documents proving fulfilment of the conditions to Tender; and
- Application Form No 2 as a part of documents for evaluation of criterion for selection of the best Tender.

In order to prove the data that has been entered in forms, Tenderer shall submit the documents listed thereof. The documents shall be submitted along with the forms, as a separate Annex and must be in the form of the act that the Tenderer stated in the forms.

#### **8.3.2. JOINT APPEARANCE**

A Tenderer may participate in the procedure of concession award in a consortium or other form of business association (hereinafter referred to as: the consortium), with an obligation to submit a contract on the establishment of consortium along with the Application Form 1, which explicitly envisages:

- that all members of the consortium shall bear joint liability for execution of the contract in accordance with the requirements thereof;
- the percentage of participation in the consortium;
- obligations of every member of the consortium; and
- authorization of one member who will act on behalf of the consortium.

Ownership in the concession company must match the percentage of participation of members in an established consortium when submitting Tender and the same can not be changed without the consent of the concedent.

#### **8.3.3. PRELIMINARY DESIGN**

Based on available information and data on a water course, surveys and hydrometric measurements and assessment of hydro energy potential conducted by the HMSMNE and/or own surveys, a tenderer chooses a concept of construction of sHPP on a respective water course that he presents in the preliminary design. The analysis of hydro potential of the water course should be the basis for the development of the preliminary design. Hydrological assessment of the water course by the HMSMNE should be used as the starting point in the procedure of preparation of technical documents, but the presented surveys and hydrometric measurements do not exclude a possibility for the tenderer to use own surveys and measurements at the respective water course. Surveys must be conducted in a quality, realistic and accurate manner based on realistically available hydro energy potential of the respective water course which technical documents is prepared for. Surveys

should be conducted by a competent institution in Montenegro or a legal entity authorized for this type of measurements.

The report on conducted previous studies and/or own surveys shall contain a technical description which, inter alia, defines particularly:

- basic requirements, criteria and limitations to designing, overview of the water course basin within the Spatial Plan of Montenegro and Water Plan of Montenegro, i.e. water region, and evidence that the offered solution for the system shall be conceptually compliant with these planning documents;
- geological and geodesy requirements for construction of sHPP;
- alternative solutions for the system's configuration and their conceptual elaboration;
- presentation of design basis, critical analysis of available bases and assessment of their reliability for such level of designing and deciding on the configuration and parameters of sHPP therein;
- selection and aligning of installed flows and power in all reviewed systems;
- analysis of generation of energy for defined hydrological series which must be fully compatible and of the same reviewed period;
- analysis of interaction between hydro energy and all other users of water courses/basins, within multipurpose solutions for exploitation, planning and protection of waters;
- conflict of interests of individual users in multipurpose solutions and opportunities for addressing or mitigating thereof;
- interactions of sHPPs with other systems in the surrounding and measures for integrating the system in the surrounding;
- establishing economic parameters of sHPP at the study level for the purpose of evaluation and selection of optimum option;
- defining criteria for evaluation and selection of alternative solutions (evaluation based on a number of criteria and selection of an option for hydro energy use of the basin/water course within integral solution for using the basin/water course),
- evaluation of proposed solution, priorities, sequence of construction and limitations.

Based on existing documents and/or own surveys, Tenderer shall choose potential locations for sHPPs and start preparing the preliminary design. The development of the preliminary design for a hydro energy plant shall provide design review of the entire system at the water course for the purpose of finding optimum configuration and parameters of all structures included in a single system, i.e. in a hydrographic and hydro energy unit. Optimum option of configuration and parameters of the system are selected based on the water management plan. Preliminary design must include a quality technical concept of optimum energy exploitation of the water course, which presents and describes all micro locations of structures of sHPPs at the respective water courses, with consideration for existing spatial and ecological limitations. The concept of the use of water courses presented in the preliminary design shall be used to present realistic and possible annual generation of electrical energy and installed power of all sHPPs at the respective water course, which is a part of the criterion for selection of the most advantageous Tender.

The preliminary design of sHPP or a system of sHPPs shall include a technical report which, inter alia, includes particularly:

- general data about the project, overview of the project and systematization of relevant performances and indicators of the plant;
- main conditions, criteria and limitations to designing, and starting parameters for designing;
- plans for designing a particular plant and geo-technical plans based on a detailed prospecting of terrain without geo-technical drilling;
- defining of alternative solutions of narrow locations of dams and other elements of the plant and sHPP, within the requirements defined by this solution for such plant;
- selection of net fall, number of generators, type of turbines and main dispositions of generators and plants for the defined size of installed flow;
- analysis of energy generation for the defined hydrology series;
- description of water management effects of a multipurpose structure (guaranteed supply of water to users with certain security, effects on improvement of water regime, other water management effects which may be quantified);
- elaboration of project solutions for all analyzed options of sHPP (overview of alternative dispositions and key elements of plants);
- bill of quantities and priced bill of quantities of technical solutions of all analyzed alternatives of sHPPs, at the level needed for optimization of disposition;
- defining energy value of sHPP for all analyzed alternatives, selection of criteria for selection of an alternative, selection of the plant alternative;
- measures for integrating structures in the surrounding and the landscape;
- accordance of preliminary design with technical recommendations for connection on electricity grid of sHPP on defined water course.

Graphic documents of the preliminary design shall include:

- overview map of the basin, with an overview of the entire system (constructed and planned structures) within which the analyzed structure of sHPP is located (recommended scales 1:10000, 1:25000);
- overview map of the section of the basin around the structure (including the entire accumulation), with an indication of all other amenities, structures and systems which are relevant for decision-making (recommended scales 1:10000, 1:25000);
- overview maps of all defined alternative configurations of the system which are analyzed in the project (alternative of narrow location of dam, alternative positions and disposition of intake, discharge and structures on them, alternative positions of machine buildings, if analyzed in such manner), recommended scales 1: 5000 do 1: 10000;
- longitudinal section along derivations of all analyzed alternatives, with charted positions of dams, accumulations, intake structures, intake and discharge derivations, position of key structures for hydro energy and multipurpose exploitation of waters under multipurpose project;
- curves of volume and size of accumulation;
- technical solutions for main structures by all analyzed alternatives: dispositions of analyzed types of dams with ancillary structures and the position of machine building within the hydro block of dam structures, sections through headwater (if planned), plan (at least at turbine and generator levels), longitudinal and cross sections of machine building, solutions for intake structure for the hydro power plant, the plan and key sections of structures at intake (water level, valves), and

discharge/connection with lower water, and technical solutions for the alternative that is adopted after optimization and which is particularly separated and clearly marked as the adopted optimum option (recommended scales 1: 500 to 1: 1000); and

- overview of the intake structure and supporting structures for other users within dispositions of the hydro block of multipurpose plant.

The preliminary design must be prepared by an institution/subject which is licenced to develop technical documents. A licence issued to an institution licenced to prepare technical documents abroad must be verified by a competent authority in Montenegro.

The selection of the concept of the preliminary design, and technical parameters offered based thereon (annual generation of electrical energy and installed power), shall imply responsibility and risk of the Tenderer that in the case a low quality and inappropriate concept of the preliminary design is selected, it is rejected. In case that results of the survey of energy potential of the water course are not presented realistically (regardless of the selection of a quality concept of the preliminary design), such solution shall not be acceptable for the Tender Commission.

The preliminary design of the first-ranked tenderer, accepted by the Tender Commission, shall be the basis for development of further technical documents. The preliminary design and multipurpose solutions of the first-ranked tenderer shall be the basis for the development of spatial planning documents by the competent authority for development of spatial planning documents or by the local self-government in which the respective water course is located.

## 9. PERFORMANCE OF CONCESSION ACTIVITIES

Performance of concession activities shall be defined in detail by the Concession Contract signed with the selected Tenderer. As a condition for signing of the contract, the selected Tenderer shall be obliged to submit the bank guarantee in the amount of 100.000,00 EUR for the period until completion of the first phase under Concession contract.

The Concession Contract shall be implemented in three phases: phase of preparation of technical documents, phase of construction of facilities of sHPP and the phase of technical and economic exploitation of the potential of water courses for generation of electric energy. Implementation phases of the concession, with duration of phases, are presented in Table 5. After the expiry of phase III of the implementation of the Concession Contract, all hydro energy plants of sHPPs, with all ancillary facilities, shall be handed over in working order to the state of Montenegro.

Table 5: Phases of implementation of the Concession Contract

<b>PHASE</b>	<b>NAME</b>
<b>I</b>	Preparation of technical documents
<b>II</b>	Construction of sHPP

<b>III</b>	Technical and economic exploitation of water-energy potential for generation of electric energy in sHPP
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**Note:** All contracts are subject of the duration of concession of 30 years from the day of creating conditions for issuance of urban planning and technical requirements, which are obtained in phase I of the Concession Contract.

### ***9.1. Implementation phases of the Concession Contract***

#### **I PHASE – Preparation of technical documents**

The first phase of the Contract includes preparation of technical documents, i.e. preliminary and main designs. Technical documents include elaboration of accepted preliminary design and should be prepared in accordance with urban planning and technical requirements. The authority competent for development of spatial planning documents, or the local self-government authority in which the respective water course is located, shall be obliged to prepare a national or a local spatial planning document in accordance with accepted preliminary design presented in the Tender. The Concession Holder's obligation in this phase is to obtain all necessary permits laid down by the Law.

As a condition of signing the Contract a bank guarantee of € 100.000,00 EUR, valid for phase I, shall be submitted.

The duration of the concession of 30 years shall be calculated from the day of creation of conditions for issuance of urban planning and technical requirements.

Concession Holder shall submit the application for obtaining urban-technical conditions in accordance with the Concession Contract.

Pursuant to Article 62a of the Law on Spatial Planning and Construction of Structures („Official Gazette of Montenegro“, No. 51/08, 40/10, 34/11, 40/11, 47/11, 35/13, 39/13 and 33/14), the competent authority shall issue urban planning and technical requirements within 30 days from the day of reception of the application of the Concession Holder. In order to build a sHPP planning documents of lower level (DUP) or Local Location Study (LSL) may be developed covering the concession area of river basin, in order to locate the object, possibility of multi-purpose use, environmental impact and a way of connecting to the electricity grid. For more complex objects or locations Detailed Spatial Plan (DSP) may be required.

For the purpose of issuance of urban planning and technical requirements, the Concession Holder shall submit the following documents:

1. application for issuance of urban planning and technical requirements;
2. preliminary design, and
3. Concession Contract.

Based on the application submitted, the competent authority assumes the obligation to obtain all documents which are needed for issuing urban planning and technical requirements.

The competent authority shall provide the following documents: water requirements issued by the Directorate for Water; opinion on the need for environmental impact assessment issued by the Environment Protection Agency; electrical energy requirements issued by the Electrical Power Company of Montenegro AD Niksic; opinion issued by the Directorate for Protection of Cultural Heritage - Cetinje; water requirements issued by the PE "Water and Sewerage"; transportation requirements issued by administration authority, or local self-government authority, and technical requirements issued by the Agency for Electronic Communications and Postal Services, and other necessary documents. Concession Holder shall bear real costs of obtaining the above documents.

Issued urban planning and technical requirements shall be used as the basis for preparing technical documents for the construction of sHPPs, which must be compliant with technical regulations, norms and standards for designing of this type of structures. Once technical documents are prepared and revised, the Concession Holder shall submit an application to the competent authority for the issuance of construction permit.

Pursuant to Article 94 of the Law on Spatial Planning and Construction of Structures, the competent authority shall issue construction permit within 30 days from the day of reception of the application, if all legally defined requirements have been met. As an exception to this, building permits for facilities that require preparation of an environmental impact assessment on the environment shall be issued within 60 days from the date of application.

For the purpose of issuance of construction permit, the Concession Holder shall submit the following documents:

1. Application for construction permit
2. Preliminary or Main design with the report on performed revision, prepared in 10 copies, of which seven in protected digital form, as well as an evidence of liability insurance of the investor and the business organisation, legal entity, or entrepreneur who developed or revised the preliminary or the main design; and
3. Concession Contract.

Based on the submitted application, the competent authority assumes the obligation to obtain all documents which are needed for issuing of construction permit.

The competent authority shall, ex officio, obtain the following documents: evidence of ownership right, or other right over the construction land (real estate folio with registered Concession Contract and a copy of the plan); water approval issued by the Directorate for Water; environmental approval issued by the Environment Protection Agency based on the strategic environmental impact assessment and, if assessed so by the Agency, developed environmental impact assessments; electric energy approval issued by the Electrical Power Company of Montenegro; approval for connecting to electrical energy system and other approvals of competent authorities in accordance with special regulations, evidence of regulation of relations in terms of payments for communal equipping and evidence on

payments of fees for construction of regional water supply system in territories of municipalities of the Montenegrin coast, and other necessary documents. Concession Holder shall bear real costs of obtaining the above documents.

Phase I of the implementation of the Concession Contract shall be completed by obtaining of construction permit.

## **PHASE II – Construction of sHPP**

As a condition for the start of this phase of the contract, the Concession Holder shall provide the concedent with bank guarantee for the amount of 25% of planned investment, in the way and form envisaged by the concession contract. The bank guarantee shall be activated in case the Tenderer fails to fulfil his obligation of constructing the facility within the period and in the way defined by the plan for the project implementation.

Construction of sHPPs is the main task of the Concession Holder in this phase. After completion of the construction of the structure, the structure shall undergo trial run, followed by submission of application for issuance of exploitation permit. Along with the application, the Concession Holder shall submit a statement of the contractor, supervisory engineer and lead designer that the structure is constructed in accordance with revised main design and construction permit, and the revised preliminary design, if the construction permit was issued for the preliminary design.

At completion of construction of structures of sHPPs, the Concession Holder shall obtain:

- Water use permit issued by the Directorate for Water;
- Contract with the Electric Power Company of Montenegro for using distribution system;
- Licence to produce electrical energy issued by the Energy Regulatory Agency; and
- Exploitation permit issued by the ministry competent for issuance of construction permits.

## **PHASE III – Technical and economic use of water energy potential for generation of electric energy in sHPP**

The last phase of the contract, which starts by obtaining exploitation permit, implies exploitation of structures of sHPP, i.e. technical and economic exploitation of water energy potential for generation of electric energy in sHPP.

The completion of phase III, after the expiry of duration of the concession, as per the Concession Contract, shall be followed by transfer of ownership of the all plants of sHPP, along with ancillary structures, to the Government of Montenegro, as the concedent. Prior to the transfer of ownership, structures of sHPPs should be revitalized in accordance with the Concession Contract. Also, the transfer of ownership of land, which was in a function of the concession activity, shall be transferred as well.

A special bank guarantee shall be submitted in this phase as security for adequate revitalization of sHPP prior to transfer of ownership. The amount, conditions for activating and the form of the bank guarantee shall be defined in more detail by the Concession Contract.

After the expiry of the period of the concession's validity, the same concession contract may be extended to the period and in a way defined in accordance with the Law.

## ***9.2 Obligations of Concession Holder***

For the purpose of successful execution of the Concession Contract, the Concession Holder shall fulfil the following obligations:

- as a condition for signing of the contract, provide a bank guarantee for execution of the contract in the value of 100.000,00 EUR for the duration of phase I of the Contract;
- as a condition for phase II of the Contract, provide a bank guarantee for execution of the contract for the amount of 25% of the planned investments for the period of one year;
- to provide a bank guarantee as a security for adequate revitalization of structures of sHPP prior to transfer of ownership;
- within 60 days following signing of Concession Contract, establish and register a concession enterprise located in Montenegro, unless he already has a registered enterprise, or if it allows extension of the registration to include implementation of concession activities;
- to use energy potential of the water course in accordance with accepted preliminary design contained in the tender;
- prior to the commencement of execution of works, resolve property-legal relations for the land needed for smooth construction of structures of sHPP on the respective water course;
- to ensure the finances needed for execution of the Concession Contract;
- to comply with designed and contracted capacities and dynamics of implementation of activities for the purpose of implementation of concession activities;
- to use rationally the constructed structures, with securing people and property in accordance with the law;
- if the Concession Holder participated in the public competition as a consortium, all members of the consortium shall bear joint liability for obligations under the Concession Contract;
- to act exclusively in accordance with approved projects and approved technological procedures;
- to report to the competent authority on potential new knowledge relating to more efficient and more economic exploitation of water potential;
- to comply in all environmental protection measures, stipulated and established under the procedure of strategic assessment and environmental impact assessment;
- to comply with minimum flow of the water course defined by competent institutions on the respective water course;
- to pay concession fee in the way defined by the Concession Contract, water use permit, and other fees in accordance with the law;

- to report, during the concession period, to the authority competent for energy on technical parameters and financial results, in accordance with the Concession Contract, and
- other obligations defined by the Concession Contract.

## **10. SPATIAL PLANNING DOCUMENTS**

Pursuant to the Law on Spatial Planning and Construction of Structures, in order to start the construction of structures, i.e. making changes to the space, it is necessary to obtain urban planning requirements, issued by the Ministry competent for spatial planning and construction of structures based on a spatial planning document.

If an appropriate spatial planning document does not exist at the time of approval of the concession, the ministry competent for spatial planning and construction of structures, or the local self-government which the water course is located in, it is necessary to prepare a national or a local spatial planning document in accordance with accepted preliminary design presented in the Tender of the first-ranked Tenderer.

Awarding of concession for exploitation of water courses presented in Table 1 shall be performed in accordance with the Law on Concession and thus the Concession Holder shall be given the right to use the land owned by the state during the period of performance of concession activities. If the location is privately owned, the Concession Holder shall provide for exploitation of the land for construction and exploitation of sHPP, in accordance with the Law and in prescribed manner.

Water courses presented in Table 1 are recognized in current local planning documents of municipalities on whose territories they are located.

If the Concession Holder, in accordance with the Law, creates conditions for extension of the Concession Contract, his right to use structures of sHPP and the land that is used for implementation of concession activity shall be extended. In this case, transfer of structures of sHPP shall be postponed for the period of validity of extended Concession Contract.

## **11. ENVIRONMENTAL PROTECTION**

Energy generation is one of the main causes of global, regional and local pollution. Having this in mind, the development and reform of energy sector in Montenegro shall take place in accordance with the environmental protection requirements. The Energy Development Strategy of Montenegro by 2030 has established a good balance between sustainable energy development of Montenegro and environmental protection. The Strategy recognizes the importance of exploitation of renewable sources of energy for generation of electric energy in Montenegro.

The Law on Environment (Official Gazette of Montenegro 48/08, 40/10, 40/11 and 27/14) establishes that Montenegro harmonizes its economic and social development with principles of environmental protection relating to: conservation of natural values, biological diversity, mitigation of risks, environmental impact assessment, alternative solutions,

substitution of chemicals, reuse and recycling, accountability of polluters for pollution and payment for damages, fees for using natural resources, obligatory insurance for possible pollution liability, publicity of data on environmental status and timely and full information.

For the purpose of harmonization of legislation on environmental protection with the European Union legislation, the Law on Environmental Impact Assessment ('Official Gazette of the Republic of Montenegro', No. 80/05, 'Official Gazette of Montenegro', No. 40/10, 73/10, 40/11 and 27/13), Law on Strategic Environmental Impact Assessment ('Official Gazette of the Republic of Montenegro', No. 80/05 and 'Official Gazette of Montenegro' 73/10, 40/11 and 59/11), Law on Integrated Environmental Prevention and Control of Environmental Pollution ('Official Gazette of the Republic of Montenegro', No. 80/05 and 'Official Gazette of Montenegro' 54/09 and 40/11), and the Law on Waste Management ('Official Gazette of Montenegro' No. 64/11) have been adopted.

The Law on Environmental Impact Assessment regulates the procedure of impact assessment for planned projects, which may have a significant environmental impact, the contents of the impact assessment study, participation of bodies, organization and publicity of decision-making, procedure of assessment and issuance of approval for the impact assessment study, cross-border information, and other matters in this field.

Pursuant to Article 5 of the Law on Environmental Impact Assessment, the Decree on projects requiring environmental impact assessment ('Official Gazette of the Republic of Montenegro', No. 20/07 and 'Official Gazette of Montenegro' 47/13 and 53/14) has been adopted. This Decree establishes two lists:

- List 1: projects subject to obligatory environmental impact assessment, and
- List 2: projects which may require environmental impact assessment.

In case the construction of sHPP forms an accumulation which accumulates the volume of water exceeding ten million cubic metres, as established by List 1, the Concession Holder shall prepare environmental impact assessment for the construction of sHPP and obtain approval of the competent authority for such assessment.

Pursuant to the Law on Environmental Impact Assessment, the Concession Holder can refer to competent authority for environmental protection with request for determining volume and content of elaborate on environmental impact assessment.

List 2, Item 3 – Energy generation and Item 12 – Infrastructure projects, establishes that “plants for generation of hydro energy above 1MW” and the construction of “accumulation generating the volume of water not exceeding ten million cubic metres”, which is used for the needs of sHPP, shall be subject of the impact assessment procedure based on the decision of the competent authority. Given that sHPPs belong to these groups, the Concession Holder shall be obliged by the competent authority to implement the impact assessment procedure and obtain approval of such authority for the environmental impact assessment study for the construction of sHPP, or obtain a decision that the development of the study is not required.

## **12. CONNECTION TO ELECTRICITY DISTRIBUTION SYSTEM**

The connection to electricity distribution system shall be performed in the way as presented in Technical Proposals for connection to electricity distribution system, which are parts of the Tender Dossier. These solutions represent an official proposal for connecting of planned sHPPs to electricity distribution system by the Electrical Power Company of Montenegro AD Niksic (EPCG) as an authorized operator of the distribution system.

Technical requirements for connection to the distribution system are laid down by the Rules for functioning of the electrical energy distribution system adopted by the EPCG. Based on the said Rules, a producer signs a contract with an operator, which defines details of mutual rights and obligations.

Pursuant to Article 79 of the Energy Law, ‘the operators of transmission and distribution systems of electric energy shall be obliged, in accordance with technical capacities of the system under the activity of management of the transmission and distribution systems and dispatching, to give advantage to privileged producers’. Further, Article 151 of the Law gives priority to connecting a plant for producing energy from renewable energy sources to the distribution or transmission system.

Also, the Energy Law, Articles 149 and 151, gives an opportunity that in case the necessary infrastructure for connection to the transmission or distribution system is not envisaged by development plans, or if it is planned for another period, the user may at own cost build the necessary infrastructure, based on previously obtained consent. The said consent may include the method, requirements and periods in line with which the operator shall purchase the constructed infrastructure from the user. Also, the infrastructure may be transferred to the system’s operator for management and maintenance based on a contract signed by two parties.

### **13. PROPERTY-LEGAL RELATIONS**

Prior to the commencement of works, the Concession Holder shall be obliged to resolve property-legal relations for the land needed for smooth construction of sHPPs on the respective water course. To that end, property-legal relations need to be resolved on cadastre plots on which the construction of sHPPs is planned.

With the Energy Law, the generation of electric energy is defined as an activity of public interest. Also, the Law on Concession recognizes a possibility of expropriation of land if it needs to be performed for implementation of the concession. Based on this, if the Concession Holder is not able to resolve property-legal relations for the reason beyond his control, the Government may determine a public interest for expropriation of cadastre plots envisaged for the construction of sHPPs in accordance with the Law on Expropriation (‘Official Gazette of Republic of Montenegro’, No. 55/00, 12/02, 28/06 and ‘Official Gazette of Montenegro’, No. 21/08).

The property-legal relations of the land, on which construction of connection to the to the existing electrical energy system is planned, shall be addressed after a concession is awarded, subject to obtained electric energy requirements from the Electrical Power Company of Montenegro AD Niksic.

## **14. STATUS OF PRIVILEGED PRODUCER**

Energy actors which produce energy from renewable sources, including small hydro power plants, shall be entitled to the status of a privileged producer. Pursuant to the Energy Law, the requirements that an energy actor must meet in order to obtain the status of privileged producer shall include:

1. to be connected to the transmission or distribution system;
2. to belong to the group of plants generating electrical energy from renewable energy sources in accordance with the Rulebook on types and classification of plants for generation of energy from renewable sources and highly efficient co-generation ('Official Gazette of Montenegro', No. 28/10);
3. to have own measurement place; and
4. not to endanger the system's security.

The status of a privileged producer is obtained by the decision of the Energy Regulatory Agency. The privileged status gives the producer the right to:

1. the special, i.e. privileged purchase price in accordance with the Decree on Tariff System for establishing incentive prices of electrical energy from renewable energy sources and highly efficient co-generation ('Official Gazette of Montenegro', No. 52/11 and 28/14); and
2. priority in taking electrical energy in the transmission or distribution system.

The method and the procedure for obtaining the status and practicing the right of a privileged producer are regulated in detail by the Decree on the method for obtaining the status and practicing rights of a privileged producer of electrical energy ('Official Gazette of Montenegro', No. 37/11 and 28/14).

As already stated, the privileged status gives energy producers from small hydro power plants the right to special purchase price. Alternatively, producers may decide not to apply for the privileged status and allocate electrical energy to the market based on the regular tariff system.

## **15. LIST OF RELEVANT LEGISLATION**

The legislation applicable to the public competition for allocation of concessions and implementation of concession activities are the following:

- Law on Concessions (Official Gazette of Montenegro 08/09);
- Energy Law (Official Gazette of Montenegro 28/10, 06/13 and 10/15);
- Law on Waters (Official Gazette of Montenegro 27/07, 32/11, 47/11);

- Law on Spatial Development and Construction of Structures (Official Gazette of Montenegro 51/08, 40/10, 34/11, 40/11, 47/11, 35/13, 39/13 and 33/14);
- Law on Environment (Official Gazette of Montenegro 48/08, 40/10, 40/11 and 27/14);
- Law on Strategic Environmental Impact Assessment (Official Gazette of Republic of Montenegro 80/05, and Official Gazette of Montenegro 73/10, 40/11, 59/11);
- Law on Environmental Impact Assessment (Official Gazette of Republic of Montenegro 80/05, and Official Gazette of Montenegro 40/10, 73/10, 40/11 and 27/13);
- Law on Financing Water Management (Official Gazette of Montenegro 40/11);
- Law on Integrated Environmental Prevention and Control of environmental pollution (Official Gazette of Republic of Montenegro 80/05, and Official Gazette of Montenegro 54/09, 40/11);
- Law on Waste Management (Official Gazette of Montenegro 64/11);
- Law on National Parks (Official Gazette of Montenegro 28/14);
- Law on Property and Legal Relations (Official Gazette of Montenegro 19/09);
- Law on Nature Protection (Official Gazette of Montenegro 51/08, 21/09, 40/11, 62/13 and 06/14);
- Law on Protection of Cultural Heritage (Official Gazette of Montenegro 49/10 and 40/11);
- Law on Safety at Work (Official Gazette of Montenegro 34/14),
- Law on Ratification of Kyoto Protocol with the UN Framework Convention on Climate Change (Official Gazette of Montenegro 17/07);
- Law on Protection from Noise in Environment (Official Gazette of Montenegro 28/11, 01/14);
- Law on State Property (Official Gazette of Montenegro 21/09 and 40/11);
- Law on Fresh Water Fishery (Official Gazette of Montenegro 11/07, 40/11);
- Law on Expropriation (Official Gazette of Republic of Montenegro 55/00, 12/02, 28/06, and Official Gazette of Montenegro 21/08);
- Law on Business Organisations (Official Gazette of Republic of Montenegro 06/02 and Official Gazette of Montenegro 17/07, 80/08, 40/10, 73/10, 36/11, 40/11);
- Law on Foreign Investments (Official Gazette of Montenegro 18/11 and 45/14);
- Decree on the method for obtaining the status and practicing rights of privileged producers of electrical energy (Official Gazette of Montenegro 37/11 and 28/14);
- Decree on the method of issuance, transfer and withdrawal of guarantees of origin of electricity produced from renewable energy sources and highly efficient cogeneration (Official Gazette of Montenegro 28/10 and 37/11);
- Decree on tariff system for establishing incentive prices of electrical energy from renewable energy sources and highly efficient cogeneration (Official Gazette of Montenegro 52/11 and 28/14);
- Decree on projects requiring environmental impact assessment (Official Gazette of Montenegro 20/07, 47/13 and 53/14);
- Decree on the method of categorization and categories of water structures and their transfer for management and maintenance (Official Gazette of Montenegro 15/08);
- Rulebook on the method of conducting audit of preliminary and main designs (Official Gazette of Montenegro 30/14);
- Regulation on the method of setting the guaranteed minimum flow downstream from the water intake structure (Official Gazette of Montenegro 22/08);

- Regulation on the contents of documents to be submitted along with the application for deciding on the need for environmental impact assessment (Official Gazette of Montenegro 14/07);
- Rulebook on the contents of the documents to be submitted along with the application for setting the scope and the contents of the environmental impact assessment study (Official Gazette of Montenegro 14/07);
- Rulebook on the contents of the environmental impact assessment study (Official Gazette of Montenegro 14/07);
- Rulebook on the contents of the application and documents for issuance of water-related documents, the method and conditions for obligatory notice under the procedure of establishing water-related conditions and the contents of water-related documents (Official Gazette of Montenegro 07/08);
- Rulebook on identifying and maintenance of zones and belts of sanitary protection of fountains and limitations in such zones (Official Gazette of Montenegro 66/09);
- Rulebook on types and classification of plants for generation of energy from renewable sources and highly efficient co-generation (Official Gazette of Montenegro 28/11 and 37/11);
- Rulebook on more detailed requirements to be met by a legal entity for measurement and exploring the potential of renewable energy sources (Official Gazette of Montenegro 28/11);
- Rulebook on the contents of the study on preparatory works (Official Gazette of Montenegro 80/08);
- Rulebook on criteria for issuance of energy licence, content of a request and registry of energy licences (“Official Gazette of Montenegro”, no. 49/10 and 38/13)
- Other laws, regulations and technical regulations in this field, o related to concession activity.