

45. The criteria (termed "factors") which serve to establish the terms of reference of the bidding are:

- a) tariff structure,
- b) duration of the concession,
- c) subsidy from the State to the bidder or payments to the State,
- d) revenues guaranteed by the State,
- e) risks assumed by the bidder,
- f) formulas to readjust tariffs and systems for review,
- g) other additional services (tourism, self-service, publicity, etc.),
- h) expected rate of returns on the net equity of the concessionaire corporation.

46. The above factors can be fixed (determined by the MOP) or variable, depending on the specific project at issue.

47. The first selection is made on the basis of the technical offer. In the final selection, the bid which wins is the best economic offer. The assignation decree must have the authorization of the Ministry of Finance. Finally, a contract is undersigned and a protocol is drawn up.

### III.1.C The Rights of the MOP and the Rights of the Concessionaires.

48. The rights of the MOP are the following:

- (a) supervise the construction and exploitation of the infrastructure works. Impose fines and require guarantees (in money or in assets) for non-compliance;
- b) request the State to make the disbursements necessary to comply with the concession contract (for instance, land expropriations);
- (c) modify, for reasons of public interest, the character of the work and the services contracted, agreeing upon in conjunction with the concessionaire the indemnities, if they were to be necessary<sup>7</sup>;
- (d) demand a responsible performance from the concessionaire in fortuitous cases, unless the terms of reference should establish some other condition.

49. The rights of the concessionaire are:

- (a) collect a toll or tariff and other benefits expressly agreed upon;
- (b) transfer the concession<sup>8</sup>. Whoever acquires it must abide by the requisites of setting up a public corporation chartered in Chile. In order to make the transfer effective, prior authorization from the MOP is needed;
- (c) sub-contract services to carry out the works and operation of the concession. The accountability with the MOP rests with the concessionaire.

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<sup>7</sup> Indemnities require a Supreme Decree.

<sup>8</sup> The transfer can only be effected in terms of the concession in its entirety.