

**Rules of Tender
for
Special Spin-Off Privatisation
of NewCo Ferronikeli L.L.C.**

These Rules of Tender set out the guidelines and procedures for submitting Bids. Through a Bidder's participation in any step of the Tender and/or the submission of a Bid, the Bidder agrees and undertakes to be bound by the terms of these Rules of Tender.

Definitions

The following terms shall have the meanings ascribed to them in these Rules of Tender, unless the sense requires otherwise:

“Affiliated Company” means any corporation or business entity which directly or indirectly owns and also controls a Bidder. For the purposes of this definition the meaning of the word “ownership” shall mean ownership of more than 50% of the share capital of such corporation or an ownership interest of more than 50% in such other entity.

“Agency” means the Kosovo Trust Agency.

“Agent” means anyone acting as agent or acting directly or indirectly on behalf of or under the instructions of another person, whether in a disclosed or undisclosed manner.

“Beneficial Owner” means the beneficial owner of the shares or other types of ownership interests in a legal entity who may have its shares or ownership interests registered in the name of another person (e.g., a relative, broker, trustee, bank or another person or entity) for any reason whatsoever, and who can or is entitled to sell or otherwise dispose of such shares or ownership interests and/or is entitled to receive any dividends, interest or profits.

“Bid” means the collection of documents submitted by a Bidder in accordance with these Rules of Tender.

“Bidder” means any person or entity, which is (1) applying to be included in the **Potential Bidders Register for Ferronikeli** and/or (2) in the process of preparing, or has submitted, a Bid.

“**Bid Documents**” mean the (1) Tender Notice, (2) an information memorandum (a) summarising the business of the SOE and its key assets, (b) with an illustration of Current Liabilities, and (c) with details of contracts which will be transferred to the Subsidiary, along with certain other information, (3) these Rules of Tender, (4) a non-disclosure agreement to be signed by the Bidders and the Agency, and (5) the model Sale Agreement and model declarations of transfer (including any attachments to any of these documents) and any other specific documents referred to in these Rules of Tender which are to be executed or delivered in connection with the entering into any Sale Agreement.

“**Board**” means the board of directors of the Kosovo Trust Agency.

“**Commitment Agreement**” means the agreement between the Agency and the Winning Bidder through which the Winning Bidder, as the purchaser of the Subsidiary, shall agree to be bound by (1) the investment commitments, (2) the employment commitments (3) any other commitments, and (4) the enforcement mechanisms related to (1)-(3) which are summarized in **Annex C** to these Rules of Tender.

“**Control Person**” means any person who is in a position to control the actions of a legal entity (corporation, partnership, etc.) by employment contract, voting proxy or otherwise, such as, by way of example only, a managing director, a CEO, a Chairman of the board of directors or a major shareholder.

“**Current Liabilities**” means certain debts and liabilities of the SOE, which have arisen during the ordinary course of its business, an illustrative list of which is set out in the Information Memorandum and/or the data room, and which shall include *inter alia* the following: (1) the net VAT liability of the SOE, exclusive of interest and penalties, that accrued in the twelve month period ending as of the date of entry into force of the relevant declaration of transfer and which remains unpaid on such date, and (2) the cost of the supplies of goods and services (but *not* including salaries, pensions or other payments to or on behalf of employees of the SOE in their capacity as employees) accruing during the normal course of business that (a) accrued during the three month period ending on the date of entry into force of the relevant declaration of transfer and (b) which remain unpaid on such date and are attributable to the business of the SOE, and (3) any other obligations to be transferred to the Subsidiary through the relevant declaration of transfer, which have been identified in the information memorandum and any updates thereto or in the data room.

“**First Bid Submission Date**” means, for the purposes of this Tender, Wednesday 17th November 2004, or any subsequent date which the Agency determines to be the First Bid Submission Date in any amendments to these Rules of Tender.

“**First Bid Submission Period**” means the period of time from 10:00 am to 12:00 noon Kosovo time on the First Bid Submission Date.

“Initial Charter Capital” means €1,250 (one thousand two hundred fifty Euros), which was or will be paid into the charter capital of the Subsidiary by the Agency for the purposes of establishing the Subsidiary.

“Potential Bidders Register” means the confidential register of eligible potential bidders, which will be held by the Agency.

“Qualifying Bidders” shall have the meaning set out in section 7.2 of these Rules of Tender.

“Representative” means any person legally authorised to act on behalf of the Bidder throughout the Tender and until, and including, the conclusion of a Sale Agreement.

“Sale Agreement” means the share sale purchase agreement to be entered into between the Winning Bidder and the Agency, on behalf of the SOE, through which the entire issued share capital of the Subsidiary shall be sold to the Winning Bidder.

“Second Bid Submission Date” means, for the purposes of this Tender, Wednesday 8th December 2004, or any subsequent date which the Agency determines to be the Second Bid Submission Date in any amendments to these Rules of Tender.

“Second Bid Submission Period” means the period of time from 10:00 am to 12:00 noon Kosovo time on the Second Bid Submission Date.

“SOE” means the socially-owned enterprise, the assets, Current Liabilities and operations of which are the subject of this Tender, as stated in the Tender Notice.

“Subsidiary” means the limited liability company to be established by the Agency on behalf of the SOE, to which certain assets and Current Liabilities of the SOE shall be transferred.

“Tender” means the process whereby the Agency selects a Winning Bidder to purchase the Subsidiary, as announced in the Tender Notice.

“Tender Notice” means the notice issued by the Agency for a specific SOE, which provides specific details of the Tender.

“UNMIK” means the United Nations Interim Administration Mission in Kosovo.

“Winning Bidder” means the Bidder with the winning bid price pursuant to these Rules of Tender who shall have the obligation to purchase the entire issued share capital of the Subsidiary.

Introduction

The Agency has been established pursuant to UNMIK Regulation No. 2002/12 of 13 June 2002 on the Establishment of the Kosovo Trust Agency. Part of the Agency’s mandate is the administering of socially-owned enterprises and the carrying out of activities which will preserve

or enhance the value and viability of such enterprises, including the sale of the assets of such enterprises to legal persons.

For additional information regarding UNMIK and the Agency, please visit the following websites: www.unmikonline.org and www.kta-kosovo.org

Sale Structure

The sale of an SOE's assets and Current Liabilities to an investor will be effected by the Agency first establishing a Subsidiary on behalf of the SOE. The particular SOE assets and Current Liabilities will subsequently be transferred to the Subsidiary, which will be sold to the Winning Bidder. The Winning Bidder will also be required to fulfil certain investment, employment and other commitments, which are summarised in **Annex C** to these Rules of Tender. The establishment of the Subsidiary and the transfer of the assets and Current Liabilities of the SOE to the Subsidiary will be carried out before the execution of the Sale Agreement.

By submitting a Bid, a Bidder understands and agrees that it is bidding to purchase the Subsidiary, which will be comprised of the assets and the Current Liabilities of the SOE being offered under the particular Tender.

Tender Process

These Rules of Tender set out the guidelines and procedures for submitting a Bid and for the Agency to select the Winning Bidder. In order to be considered, a Bid must comply with these Rules of Tender.

1. Prohibited Bidders

1.1 The following persons shall not be eligible to bid and shall be automatically disqualified if bids are submitted by them:

- (a) natural persons;
- (b) publicly and socially owned enterprises;
- (c) Kosovo government departments or majority government-owned institutions;
- (d) legal persons who are currently subject to bankruptcy or insolvency proceedings;
- (e) legal persons who (i) are in material breach of a contract entered into with the Agency or with any of the enterprises administered by the Agency (the existence and materiality of such breach to be determined by the Agency in its sole discretion) (ii) have any fine or debt outstanding to the Agency or an enterprise administered by the Agency; (iii) are on a list of entities with whom the Agency, UNMIK or the European Union is instructed by a recognized international entity,

such as OFAC, from carrying out transactions, including a list of persons who are the subject of international sanctions or export control rules; or (iv) legal persons who have not paid fines imposed upon them by the Agency pursuant to its powers set out in section 27 of UNMIK Regulation 2002/12 or subject of any claim or dispute (whether the matter is in court or otherwise) related to section 28 of UNMIK Regulation 2002/12;

- (f) legal persons acting as an Agent for any of the persons or entities referred to in sections 1.1(a)-(e) above or any Agent who has not disclosed his/her/its principal(s), as required by these Rules of Tender; and
- (g) legal entities whose Beneficial Owners or Control Persons fall within the categories outlined at section 1.1 (b) – (f) above.

2. Bid Overview and Bid Conditions

There shall be two rounds of bidding during the Tender. After the first round of bids has been opened, the Agency shall use reasonable efforts to ensure that Bidders' names remain confidential.

- 2.2 In order to submit a Bid, the Bidder must be eligible under section 1.1 and pre-qualified in the **Potential Bidders Register for Ferronikeli** in accordance with section 4 below.
- 2.3 Validly registered Bidders who have submitted one of the three highest bid prices (or all bidders if there are three or fewer Bids) during the first round of bidding shall be informed of the highest bid price and shall be invited to participate in the second round of bidding. During the second round of bidding, the qualifying first round Bidders shall be given an opportunity to increase their bid prices. The second round bids shall be submitted during the Second Bid Submission Period. The Bidder offering the highest price during this bidding process shall be considered the Winning Bidder.
- 2.4 By the submission of a Bid, a Bidder shall be bound by the following bid conditions:
 - (a) the Winning Bidder must agree to the commitments set out in **Annex C** to these Rules of Tender and the Winning Bidder must execute the Commitment Agreement with the Agency setting forth such commitments as a condition for the entry into force of the Sale Agreement.
 - (b) the Winning Bidder must, in addition to the winning bid price, reimburse the Agency for the Initial Charter Capital.
 - (c) the total amount of the winning bid price plus the Initial Charter Capital, with such total reduced by the amount of the bid deposit referred to in section 6 below, shall be paid by the Winning Bidder into an escrow bank account (designated by the Agency) prior to the date of signing of the Sale Agreement and Commitment

Agreement (which shall be executed within 60 calendar days of the Winning Bidder being notified that its Bid has been selected as the winning Bid), in accordance with section 11 below.

- (d) without prejudice to any other provision of these Rules of Tender, the Winning Bidder shall supply all information and documentation requested by the Agency (i) in order to satisfy any money laundering requirements or procedures (ii) for the purposes of any investigations by the Agency to confirm the origin of the purchase price funds (iii) for the purposes of the Agency confirming that the Winning Bidder is eligible under section 1.1 and pre-qualified under section 4 of these Rules of Tender and/or (iv) for the purposes of compliance with any applicable law or international best practice, as determined by the Agency.

2.5 All costs and risks connected with responding to the Tender, including due diligence, are at the sole responsibility and risk of the Bidder.

3. Obtaining Bid Documents

Prospective Bidders shall be instructed in the Tender Notice to contact a named person at the Agency, prior to the stated relevant deadline in order to receive the applicable Bid Documents. The Agency shall endeavour to provide the Bid Documents to the prospective Bidder within 3 business days of receipt of such contact. The Bid Documents shall normally be sent without charge by e-mail or regular post. A Bidder wishing to receive the Bid Documents by another method shall bear the cost of such other method.

4. Eligibility and Pre-Qualification Procedures

4.1 All potential bidders will be subject to a prequalification process that will assist the Agency to assess their ability to effectively run and develop the business of the Subsidiary and their ability to satisfy the commitments summarized in **Annex C** to these Rules of Tender. In order to become pre-qualified, each potential bidder must provide the Agency with documentary proof that it satisfies the following criteria:

- (a) that it or an Affiliated Company is a professional mining company, which has been involved in production mining producing over €10 million per annum of mineral product over each of the past 5 years.
- (b) that it has an able and professional team of managers and staff in sufficient numbers who are experienced in the mining industry.
- (c) the furnishing of 5 years of audited financial statements and annual reports and other relevant documentation in support of the evidence presented for sections (a) and (b) above.

- 4.2 In order to pre-qualify to bid in the Tender, a Bidder must apply for registration (with the required documentation) in the **Potential Bidders Register for Ferronikeli**. The Agency shall only include a party in the Potential Bidders Register if such party is determined by the Agency to have satisfied the requirements of this section 4. The Agency reserves the right to remove a potential or actual Bidder from the **Potential Bidders Register for Ferronikeli** at any time should the Agency determine in its discretion that such bidder should have been determined to be ineligible under section 1.1 above or otherwise not be in compliance with the requirements of this section 4, or for any other justifiable reason. The Agency shall issue an eligibility registration form to Bidders who have been included in the **Potential Bidders Register for Ferronikeli**, and provide them with a unique eligibility registration number. A Bidder must include a copy of this eligibility registration form in any Bid that it submits to the Agency and such eligibility registration form and number may be used in any future tender rounds, unless cancelled or otherwise determined by the Agency.
- 4.3 In order to be considered for inclusion in the **Potential Bidders Register for Ferronikeli**, a Bidder must submit the following documentation to the Agency:
- (i) the Bidder's name, address, and other contact details and the name and contact details of a Representative who shall serve as the Bidder's principal contact person with the Agency;
 - (ii) the following information, as applicable to each Bidder:
 - (aa) a certified copy of the entity's business registration information and the identity of its Beneficial Owners and Control Persons. (Proof of the identity of Beneficial Owners and Control Persons under this section (aa) shall not be required for legal entities listed on internationally-recognised stock exchanges provided details of such listing(s) are provided).
 - (bb) if the Bidder is a **partnership**, a certified copy of the partnership's founding documents and the identity of its partners and its Beneficial Owners and Control Persons;
 - (cc) if the Bidder is a **consortium** of **partnerships** or **companies**, certified copies of the founding documents of such consortium, along with certified copies of identification cards, passports and business registration information of the participants in the consortium including the identity of the Beneficial Owners and Control Persons of the consortium members; or
 - (dd) if the Bidder is bidding as an Agent for another party, a statement to that effect, the name and description of that other party, along with information about that other party as set out in sections (aa)-

(cc) above, including the identity of the Beneficial Owners and Control Persons of such other party where applicable.

- (iii) a written statement that it is not prohibited from bidding pursuant to section 1.1 above, along with any supporting documentation deemed relevant in relation to the same.

The Agency may request that a Bidder provide such further confirmations, information or documentation as the Agency may require to confirm any of the matters referred to in this section 4.3.

- 4.4 All information submitted in an application for inclusion in the **Potential Bidders Register for Ferronikeli** must be in typewritten form.
- 4.5 By applying to be included in the **Potential Bidders Register for Ferronikeli**, the Bidder is confirming and representing that it has the authority, whether implied or otherwise, to disclose the information contained in the application to the Agency and that all persons or legal entities mentioned in such application have consented to such disclosure. By applying, the Bidder also agrees to hold harmless and indemnify the Agency in respect of any claim that may be made against it by any person or entity in relation to such disclosure.
- 4.6 The Agency shall use reasonable efforts to ensure that its staff treat all information provided in an application for inclusion in the **Potential Bidders Register for Ferronikeli** as confidential and shall not disclose such information to third parties except (a) as may be required by law or by order of a court of competent jurisdiction, either in Kosovo or in jurisdictions outside of Kosovo or (b) to law enforcement agencies inside or outside of Kosovo or (c) to any organs instructed by the Agency for the purposes of background checks and any other reasonable investigations in the case the Bidder becomes a Qualified Bidder and/or a Winning Bidder or (d) if the a Bidder has otherwise agreed in writing.
- 4.7 Documents submitted for the purposes of this section 4 must be submitted to the Agency, on or before Friday 24th September 2004, in one English language version. A Bidder may, if it so chooses, submit copies of its application documents in the Albanian language or Serbian language along with the English language version. The English language version of a Bid shall control in case of a discrepancy between different language versions.

5. **Contents of Bids**

- 5.1 Bids must be submitted in one English language version. A Bidder may, if it so chooses, submit copies of its application documents in the Albanian language or Serbian language along with the English language version. The English language version of a Bid shall control in case of a discrepancy between different language versions.

5.2 The **first** Bid, which will have to be submitted on the First Bid Submission Period, must be submitted in the following manner:

- (a) The following documents must be placed in a sealed envelope with the words “**Supplemental Bid Information**” printed on the outside of the envelope:
 - (i) a copy of the eligibility registration form issued pursuant to section 4 above;
 - (ii) an original of a letter duly signed by or on behalf of the Bidder stating that the Bidder agrees to be bound by the Rules of Tender, and agrees to be bound by the commitments summarized in **Annex C** to these Rules of Tender and will be set out fully in the Commitment Agreement in their entirety;
 - (iii) an original bank letter from a reputable bank (and not being a bank registered in a country which is on the ‘blacklist’ of the Financial Action Task Force (FATF)) confirming that the Bidder will have access to sufficient funds during the entire Tender period to pay its full bid price and the Initial Charter Capital. **Such bank letter must not state the amount of the Bidder’s bid price;**
 - (iv) proof that the bid submission fee has been transferred to the designated account;
 - (v) proof that the bid deposit (referred to in section 6 below) has been transferred to the designated account;
 - (vi) comments on the draft Sale Agreement and Commitment Agreement (for the avoidance of doubt, the Agency reserves the right as indicated elsewhere also in these Rules of Tender not to accept any proposed changes by any Bidder to draft Sale Agreement and Commitment Agreement in its sole discretion);
 - (vii) the Bidder’s monitoring and oversight plan for detailed implementation of the special spin-off conditions summarized in **Annex C** signed by Bidder’s Representative, which will have been agreed between the Bidder and the Agency, the terms and conditions of which are set out in the Commitment Agreement;
 - (viii) the Bidder’s proposed 5-year revitalization plan for the Subsidiary, with details of the processing approach, commissioning timescales, and output levels for production, which plan will be attached to the Commitment Agreement.

- (b) The amount of the bid price, stated in euro (€), must be placed in a second, separate sealed envelope with the words “**First Bid Price**” printed on the outside of the envelope. *Annex B to these Rules of Tender provides a worksheet that Bidders may use to calculate the total amount of money to be paid to the Agency if they are chosen as the Winning Bidder.*
- (c) The sealed envelopes in (a) and (b) above must together be placed in a third sealed envelope with the words “**First Bid for Tender No. []**”. There must be no other information provided on the outside of this envelope and no information or marks which could identify the Bidder.
- (d) Upon the receipt of a Bid, a number will be written on the main Bid envelope and recorded on the receipt to be submitted pursuant to section 7 below.

5.3 The **second** Bid, which will be submitted on the Second Bid Submission Period, must be submitted in the following manner:

- (a) The second Bid must include the following information:
 - (i) a copy of the eligibility registration form;
 - (ii) the bid number assigned to the first Bid;
 - (iii) The amount of the second Bid price, stated in euro (€); *Annex B to these Rules of Tender provides a worksheet that Bidders may use to calculate the total amount of money to be paid to the Agency if they are chosen as the Winning Bidder.*
- (b) The required contents listed above must together be placed in a sealed envelope with the words “**Second Bid for Tender No. []**”.
- (c) Upon the receipt of a second Bid, a number will be written on the Bid envelope and recorded on the receipt provide by the Agency.

6. Bid Submission Fee and Bid Deposit

- 6.1 To offset administrative and communication costs associated with reviewing and processing Bids, each Bidder must submit a non-refundable bid submission fee of €1000.00 (one thousand euros) with its first Bid. Such fee shall be paid by way of a bank transfer to the bank account designated by the Agency.
- 6.2 Each Bidder shall also submit a refundable bid deposit of **€50,000 (fifty thousand euros)** with its first Bid. Such fee, payable to the Agency, shall be paid by way of a bank transfer to the account designated by the Agency. The bid deposit is to ensure the good

faith of the Bidders. The Agency shall credit the bid deposit of the Winning Bidder to the purchase price under the Sale Agreement.

- 6.3 The Agency shall endeavour to return the bid deposit of any bidder who participated in the first round of bidding but who is not determined to be a Qualifying Bidder within 10 days from the Bid Submission Date.
- 6.4 The Agency shall endeavour to return the bid deposits of Qualifying Bidders by the earlier of the following: (i) 10 days after the date that the Sale Agreement enters into force and (ii) the 30th calendar day after the Bid Submission Date.
- 6.5 A bid deposit can be forfeited in the circumstances set out in sections 11, 12 and 14 below.

7. Submission of Bids

7.1 Submission of first Bids

- (a) All **first** Bids must be submitted to the Agency during the First Bid Submission Period on the first Bid Submission Date, Wednesday, 17th November 2004, between 10:00 and 12:00, Kosovo time, at either the Agency's Pristina office or its Mitrovica office. The Agency shall not receive any first Bids that are presented outside of this time period or delivered to any other location.
- (b) A receipt stating the date, hour, and minute of the Agency's receipt of the Bid, signed by or on behalf of the panel of Agency employees receiving the bids, shall be issued to the person submitting the Bid on behalf of a Bidder at the time of the submission of the Bid. The person submitting the Bid shall not identify the Bidder at the time of the submission of the Bid. The panel's determination of the time of submission of a Bid shall be final and may not be appealed to a court or other organ.
- (c) First Bids shall be opened in public within three hours of the end of the First Bid Submission Period and the three bid receipt numbers of the three highest bid prices shall be declared. The highest price shall be identified and announced.

7.2 Submission of second Bids

During the Second Bid Submission Period, the Bidders who submitted the three highest bids (or if there are only three, then all bids) during the First Bid Submission Period ("**Qualifying Bidders**") shall be given the opportunity to increase their bid prices above the highest bid price submitted during the First Bid Submission Period. In the event that there are two or more first Bids of equal value that would rank as the third-highest bid, then both/all such bidders shall become Qualifying Bidders.

- 7.3 Qualifying Bidders shall be permitted to submit their second Bid during the Second Bid Submission Period to the same places designated for first Bids.
- 7.4 In the event that a Qualifying Bidder does not submit a second Bid during the Second Bid Submission Period, such Bidder's first Bid shall automatically be considered as being such Bidder's second Bid and such Bidder shall be obligated to honour its first Bid. A Qualifying Bidder's second Bid may not be lower than its First Bid.
- 7.5 Prior to the Second Bid Submission Period, the Agency may contact some or all of the Qualified Bidders and request a meeting with one or more Qualified Bidders to discuss the contents of their documents submitted pursuant to sections 4.3 and 5.2(a) of these Rules of Tender to verify the factual statements made therein and/or to seek clarifications on any other statements therein.

8. Due Diligence

- 8.1 Information collection and analysis is the responsibility of each Bidder. Before submission of a Bid, the Agency shall, within the limits of its administrative resources, use reasonable endeavours to allow all Bidders equal and fair access to the assets of the SOE and all relevant documentation, prior to the submission of their Bids. The Agency shall allow Bidders to collect information in Kosovo at the SOE site and at any data room the Agency may establish for the inspection of documents relating to the SOE. The Agency shall not be required to translate any documentation for Bidders or provide any interpretation services. The Agency may decline access to information to any person which in its sole discretion does not appear to be a genuine, qualified investor or Bidder.
- 8.2 The Agency shall be solely responsible for coordinating any visits to the SOE premises and any data room with Bidders. **Bidders must not contact the SOE directly and shall raise inquiries only with the Agency.** Prospective Bidders may schedule appointments by directing inquiries as directed in the Tender Notice. Visits may only take place during the dates specified in the Tender Schedule set out in Annex A hereto.
- 8.3 The submission of a Bid is an acknowledgement by the Bidder to the Agency that the Bidder has made its own independent investigation and assessment of the conditions and operations of the SOE and the available documentation (including but not limited to the Information Memorandum, the data room, public searches and registries, and a review of the applicable law) and that it has satisfied itself as to those circumstances and as to the accuracy of all information about the SOE provided by or on behalf of the Agency. No failure by the Bidder to investigate or acquaint itself with the available information and the existing circumstances shall relieve it from performing its obligations under the Sale Agreement. Neither the Agency nor the applicable SOE shall assume any responsibility for any conclusions or interpretations made by any Bidder on the basis of information made available to it.
- 8.4 Any Bid contingent upon further due diligence or investigation or upon another Bidder's Bid shall be deemed incomplete and unacceptable by the Agency.

- 8.5 As a result of circumstances in Kosovo, it is acknowledged by all relevant parties that certain documentation concerning the SOE and its past activities may have been lost, destroyed or removed from the premises of the SOE and can be considered to be no longer available. Therefore, Bidders must be aware that any analysis of documents may be incomplete and should be accompanied by a thorough assessment of the assets and Current Liabilities of the SOE which are being transferred to the Subsidiary.
- 8.6 The Bidder shall be responsible for any required interpretation and translation during the due diligence process. Any persons supplying translation or interpretation services to the Bidder shall comply with any confidentiality obligations as set out in the Rules of Tender and may be required to sign a confidentiality statement if required by the Agency.
- 8.7 The Bidder must sign the confidentiality agreement included with the Bid Documents and return it to the Agency before the Bidder will be permitted to conduct a site visit or review documents concerning the SOE. A Bidder may also need to agree to data room rules before being granted access to any data room containing documents of the SOE.

9. Modification, Withdrawal Late Submission of Bids

A Bidder may not modify a Bid (except with the Agency's written permission or as set out in these Rules of Tender) or withdraw its Bid after the Bid has been submitted to the Agency. No Bids will be accepted after the deadline for submitting Bids.

10. Ranking of Second Bids and Bid Selection

- 10.1 After the Second Bid Submission Period, all of the bids by the Qualifying Bidders shall be reviewed. The bidder with the highest bid price, either from the first or the second round of bidding, shall be the Winning Bidder. In the event that there are two or more identical highest bid prices, the Winning Bidder shall be chosen as follows:
- (a) if one of the Bids has participation by an employee or employees of the particular SOE, then the winning bid shall be such Bid; or
 - (b) if none of the Bids or more than one of the identical Bids has participation by an employee or employees of the particular SOE, then the winning Bid shall be the earliest submitted Bid among the Bids with identical bid prices.

The Agency's determination as to whether a Bid has participation by an employee or employees of the particular SOE shall be final and may not be appealed to a court or other organ.

- 10.2 In the event that there are no Bids received that satisfy the criteria and conditions in the Rules of Tender, the Board or the Board's panel, as the case may be, may declare the Tender unsuccessful.
- 10.3 The Board reserves the right to reject Bids that, in its judgment, bear no rational relation to the perceived value of the assets and Current Liabilities being transferred to the Subsidiary concerned. The Board or the Board's panel, as the case may be, may, in its discretion, postpone the determination of the Winning Bidder until a date after the Second Bid Submission Date.
- 10.4 The Agency shall formally notify the Winning Bidder in writing that it has won the Tender and shall endeavour to notify the other Bidders of this fact within 2 business days of the selection of the Winning Bidder.

11. Escrow

- 11.1 Within 20 business days of notifying the Winning Bidder in writing of its selection, the Winning Bidder shall deposit €1,000,000 (One million Euro) to the Agency's designated escrow bank account. The Agency and the Winning Bidder shall sign an escrow agreement in which the parties will agree that the sale is not to be considered complete until the Sale Agreement and the Commitment Agreement have entered into force and the balance payable of the winning Bid paid to the Agency. In the event the Winning Bidder fails to place the funds into escrow within the time period prescribed in these Rules of Tender, its bid deposit shall automatically be forfeited.
- 11.2 The funds used for the purchase price may not be paid in cash and must not come from any FATF blacklisted jurisdiction.

12. Negotiation of the Commitment Agreement and Sale Agreement

- 12.1 The (1) Commitment Agreement and (2) Sale Agreement shall be executed within 60 calendar days from the date of formal notification of the Winning Bidder of its selection by the Agency.
- 12.2 The Agency may in its discretion on notice to the Winning Bidder extend this period if it believes that additional time is reasonably necessary for the purposes of concluding the Sale Agreement and the Commitment Agreement.
- 12.3 The Winning Bidder shall use its best efforts to conclude the Sale Agreement and the Commitment Agreement with the Agency.
- 12.4 Negotiations between the Agency and the Winning Bidder pertaining to the Sale Agreement and the Commitment Agreement shall be kept to a minimum and the Agency reserves the right, in its sole discretion, not to accept any material changes to the terms

and conditions of the Sale Agreement and the Commitment Agreement, or any other proposed changes to such Agreements that would in the aggregate constitute a material change to these Agreements in the opinion of the Agency.

- 12.5 If the negotiations with the Winning Bidder pertaining to the Sale Agreement and/or the Commitment Agreement are not completed within, or in the opinion of the Agency such negotiations are not expected to result in the execution of the Sale Agreement and the Commitment Agreement by the end of, the time period set out in section 12.1 above, or the Winning Bidder fails to submit the payments required in accordance with clause 11.1 above, the second-highest ranking Bid (and in turn the third-highest ranking Bid, if necessary) shall be treated as the winning Bid and negotiations shall begin with such Bidder in accordance with this section 12.

13. Execution of the Commitment Agreement and Sale Agreement

The Commitment Agreement and Sale Agreement shall be signed by an authorised representative of the Agency and the Representative of the Winning Bidder. Supporting documentation proving the authority of the Representative to sign these agreements must be presented to the Agency at or prior to the time of signature.

14 Agency's Reservation of Rights

14.1 Amendments to Tender Requirements

The Agency reserves the right to amend, modify, or terminate any of the procedures set out in these Rules of Tender at any time without prior notice and at no cost or liability to the Agency. Amendments to these Rules of Tender, if made, will be issued in writing by the Agency and made public and sent to each prospective Bidder registered in the **Potential Bidders Register for Ferronikeli**.

14.2 Rejection of Winning Bidder

The Agency may reject a Winning Bidder's Bid and cease negotiation of the Sale Agreement and the Commitment Agreement if the Agency becomes aware or it has reasonable belief that information contained in the Winning Bidder's application to the **Potential Bidders Register for Ferronikeli** or any information in the Winning Bidder's Bid is false or misleading. In such a case, the Winning Bidder's bid deposit shall be forfeited and the second-highest ranking Bid (and in turn the third-highest ranking Bid, if necessary) will be treated as the winning Bid, in accordance with section 12.5 above.

14.3 Cancellation of Tender

The Board may cancel or amend in whole or in part the Tender for the sale of the Subsidiary at any time and for any reason in its sole discretion. In particular, but without

limiting the generality of the preceding sentence, the Agency may cancel the Tender if the Agency receives indications of or suspects any collusion among Bidders, the use of coercion or threats by a Bidder or Bidders to dissuade the submission of Bids by others or to affect the contents of another Bidder's Bid, or any illegal or improper activity performed in connection with the Tender by any person. Should the Agency so cancel or amend the Tender, the Agency shall not be held responsible for any costs or liabilities incurred by any Bidder or third parties. If the Agency cancels the Tender, all bid deposits received and any other funds received (except for the non-refundable bid submission fee) shall be returned within 15 business days of the date of cancellation.

14.4 *Contractual Relationship*

Until the entry into force of an executed Sale Agreement and the Commitment Agreement, there shall be no contract in effect between the Agency and the Winning Bidder and neither the Agency nor the SOE shall be bound in any way to one another. Further, the terms of the Information Memorandum or other Bid Documents shall not be construed as an offer by the Agency.

14.5 *Disclaimer*

To the extent permitted by law, the Agency and its representatives expressly disclaim:

- (a) any and all liability for representations, warranties or statements contained in any written material other than the Sale Agreement (including without limitation the Information Memorandum and the contents of any data room) furnished, or in any information orally transmitted, to a Bidder by the Agency or the SOE, any of their employees, staff, contractors or agents except for the express representations of the Agency contained in the Sale Agreement; and
- (b) any representations or warranties implied by any law that is applicable in Kosovo or stipulated as governing law in the Sale Agreement and the Commitment Agreement.

14.6 *Language*

These Rules of Tender have been prepared in the English, Albanian and Serbian languages. The versions in Albanian and Serbian shall be for the convenience of parties only and in the event of any discrepancy between the language versions, the English language version shall prevail.

14.7 *Voidability of Sale Agreement*

Notwithstanding section 10.5 of UNMIK Regulation No. 2002/13 or other provisions in applicable laws, should it be determined that (a) the funds used by a Winning Bidder to acquire the Subsidiary derived directly or indirectly from illegal activity; or (b) the Buyer

was involved in collusion during the tender process or any other violation of the Rules of Tender, then the Sale Agreement shall be voidable by the KTA.

15. Dispute Resolution

- 15.1 Subject to section 15.2 below, the decisions of the Agency arising under these Rules of Tender or the Tender generally shall be final and shall not be appealed to any court or other organ. Bidders shall not be entitled to file a claim in any court within or outside Kosovo, either to reverse a decision of the Agency or for compensation for costs or liabilities arising as a result of a decision of the Agency, so far as allowed by law.
- 15.2 Notwithstanding the preceding clause, the parties acknowledge and agree that the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters shall have exclusive jurisdiction over the Kosovo Trust Agency pursuant to the applicable law in Kosovo.

16. Tender Schedule

A Tender Schedule, which sets out important time periods and dates for the Tender is attached as Annex A hereto.

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ANNEX A

Tender Schedule

Summary Timetable

| <i>Date</i> | <i>From</i> | <i>To</i> |
|---|---|-----------------|
| Publication of Tender Notice | 12 July 2004 | |
| Due Diligence Visits | 12 July 2004 | 16 March 2005 |
| Pre Qualification | 12 July 2004 | 29 October 2004 |
| First Bid Submission Date | 16 March 2005 | |
| Informing Bidders on results of Tender | Immediate | |
| Second Bid Submission Date | 12 April 2005 | |
| Final negotiations with winning Bidder | Within 60 Days of formal notification of Winning Bidder | |
| Transfer of Assets and Current Liabilities to Subsidiary/Signing of Share Purchase Agreement | Upon Contract ratification | |

The KTA reserves the right to alter this schedule.

ANNEX B

**Worksheet for calculating the total amount of money
that a Winning Bidder will need to pay to the Agency**

STEP 1: **Bid Price.** Enter the bid price you intend
to pay for the Subsidiary..... 1. _____

STEP 2: **Initial Charter Capital.** This amount on line
2 is the amount of initial charter capital of the
Subsidiary for which the Agency must be
reimbursed..... 2. €1,250.00

STEP 3: **Add the amounts on Lines 1 and 2 and**
enter the result on Line 3..... 3. _____

**THE AMOUNT ON LINE 3 IS THE TOTAL AMOUNT OF MONEY THAT YOU WILL
NEED TO PAY TO THE AGENCY SHOULD YOU BE CHOSEN AS THE WINNING
BIDDER.**

Annex C

SPECIAL SPIN-OFF BID CONDITIONS

A. Requirements:

The following obligations and enforcement mechanisms shall be incorporated into the executed Commitment Agreement:

- Each Bidder must submit a revitalization plan with details of the processing approach, commissioning timescales, and output levels for production taking into consideration the requirements/conditions set out below.
- A call option for the entire issued share capital of the Subsidiary shall be incorporated into the Commitment Agreement. This call option shall be exercisable by or at the direction of the SRSB or his/her legal successor, in the event that the buyer of the Subsidiary fails to fulfill its obligations under the Commitment Agreement.
- As a condition of sale, the purchaser of the Subsidiary must agree to comply with the requirements set out in the following table:

| Condition | Purpose |
|---|--|
| Essential Investment conditions: A minimum of €20,000,000 must be spent on capital improvement investments to the Subsidiary's pyrometallurgical plant and mines in Kosovo over the first 3 years starting from the date of sale. At least €5,000,000 must be spent by the end of year 1. At least an additional €10,000,000 must be spent by the end of year 2. The final €5,000,000 must be spent before the end of year 3. | To ensure that at least the minimum capital investment in the operations will be undertaken by the purchaser of the Subsidiary. |
| Essential Employment Conditions: A minimum of 1,000 workers must be employed by the Subsidiary by the end of Year 1 and for a minimum of 2 years thereafter. | To ensure that there is a minimum operational complement of employees. |
| The Commitment Agreement shall provide for a call option for the entire issued share capital of the newco, which will be exercisable if the conditions set out above in this table are not met. This call option will lapse as soon as the conditions have been shown to be fulfilled. | To enable the KTA, or its successor, to claw back the company if it is not being developed and adequately operated and then re-tender. |
| Bidders to commit to providing a €2,000,000 Performance Bond as surety for their commitments. This Bond will be held in trust and will be released when all conditions are met to become an | To enable the KTA, or its successor, to recover the SOE if it is not being developed and invested and then to |

| | |
|--|------------|
| Environmental Clean-Up Bond. The Bond will be forfeited if the conditions are not met. | re-tender. |
|--|------------|

The above conditions are not considered to be onerous and are considered to be the minimum investment and employment levels needed for a professional mining industry to refurbish and revive the operations of the Subsidiary. The KTA mining experts would expect investment and employment commitments that are greater than these to result from this privatisation.

B. Recommendations:

The purchaser of the Subsidiary will be required to apply best international practice regarding sustainable mineral development, giving particular attention to environmental and social performance at the community level and to comply with applicable World Bank guidelines. It is expected that quality investors will have demonstrated experience in this regard and be able to demonstrate application within Kosovo. To this end, the Directorate of Mines and Mineral Resources and Prime Minister's Energy Office will provide additional guidance in this regard.