

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

**DECREE-LAW No. 07 /2005
OF**

PUBLIC TENDERING IN RESPECT OF PETROLEUM CONTRACT AWARDS

Law No. 13/2005, of 2 September (*Law on Petroleum Activities*) stipulates that the granting of authorisations, including the award of petroleum contracts, be preceded by a public tender as a rule of thumb. This decree-law empowers the Government to also issue regulations on matters relating to petroleum operations, including petroleum exploration and production. It is therefore necessary to regulate the public tendering process in respect of petroleum contract awards.

Thus, pursuant to article 13 of Law No. 13/2005, of 2 September (*Law on Petroleum Activities*), combined with paragraph 31.1(b) of the aforementioned law, and taking also into consideration article 10 of the said law, the Government enacts the following that shall have the force of law:

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Material scope**

This decree-law establishes the general procedures for conducting public tenders in respect of the award of contract areas and entering into petroleum contracts referred to in article 10 of Law No. 13/2005, of 2 September (*Law on Petroleum Activities*).

**Article 2
Purpose of public tendering**

Public tenders conducted under this decree-law are intended to select companies, and/or groups of companies, with which the Government shall enter into petroleum contracts to carry on petroleum operations in specified areas.

**Article 3
Petroleum contract**

1. Petroleum contracts to be entered into with selected companies and/or groups of companies shall take the form of Production Sharing Contracts.
2. Production Sharing Contracts to be used in public tenders conducted under this decree-law shall be published as an annex to the public notice regarding the relevant tender. The terms and conditions contained in Annex 1 to this

regulation must form a part of the Production Sharing Contract to be attached to the public notice.

3. The public notice regarding each public tender shall stipulate that participation in the public tender is considered from a legal viewpoint as an expressed acceptance by bidders of the terms set out in the Production Sharing Contract attached to the public notice.

Article 4 Bidding

1. The companies and/or groups of companies, as referred to in article 2, shall be selected on the basis of submitted bids, and such a selection is subject to Law No. 13/2005, of 2 September (*Law on Petroleum Activities*), to this decree-law, and the public notice issued by the Minister of Natural Resources, Minerals and Energy Policy regarding the relevant public tender.
2. Bids shall be submitted for a specified contract area, and no bid referring simultaneously to more than one contract area shall be submitted.
3. Submission by one same company of more than one bid for the same contract area, whether individually or through a group of companies, is prohibited.
4. The Minister of Natural Resources, Minerals and Energy Policy shall establish by regulation internal procedures for the receipt, custody and opening of submitted bids.
5. The Minister of Natural Resources, Minerals and Energy Policy may request any bidder to provide further information regarding its submitted bid.

Article 5 Language to be used in tendering

Subject to the legal provisions in force with regard to the use of official languages, public tenders under this decree-law may be conducted in English.

CHAPTER II PUBLIC NOTICES

Article 6 Advertising by public notice

1. The launch of a public tender in respect of petroleum contract awards shall be advertised by a provisional public notice, to be published in the Official Gazette, and in the media as the Minister of Natural Resources, Minerals and Energy Policy deems it appropriate, no later than 15 days before the launch of such a tender.

2. The final and definitive notice, which shall also be published in the Official Gazette, and in the media as the Minister of Natural Resources, Minerals and Energy Policy deems it appropriate, shall be published no later than 45 days before the deadline for submitting bids.

Article 7

Contents

1. The public notice referred to in article 6 shall state that the Minister of Natural Resources, Minerals and Energy Policy is the entity organising the public tender, and must regulate the following matters:
 - (a) forms to be filled in and structure of the bids to be submitted (indicating the documents required and the formal requirements for such documents, the annexes to be attached thereto, and the details required in relation to the information requested);
 - (b) the contract areas to be awarded by entering into a petroleum contract, defined by geographic coordinates and illustrated by appropriate maps;
 - (c) minimum exploration work programme (1 to 3 years) and subsequent exploration work programme (4 to 7 years);
 - (d) state participation in petroleum operations in the contract areas to be awarded, setting out the terms on which such a participation shall be ensured under the Production Sharing Contract;
 - (e) documents required for admission to the public tender;
 - (f) criteria to be followed in appraising the technical ability, financial capability and legal qualification of bidders;
 - (g) technical ability, economic and financial capability of submitted bids;
 - (h) the date, place and time when data, surveys and other elements and information required to prepare bids, as well as the cost for the acquisition thereof, including the person that will furnish the information and any contacts for the acquisition of further information, shall be communicated to the parties concerned;
 - (i) deadline, venue (address) and format for the submission of bids;
 - (j) criteria for deciding on bids, and on what basis and how such criteria shall be assessed;
 - (k) procedures for awarding contract areas;
 - (l) appeals on the results of the tender;

- (m) estimated timeframe for the completion of the entire process up to the commencement of exploration;
 - (n) applicable fees, including a non-refundable participation fee;
 - (o) guarantees or securities to be provided by bidders;
 - (p) payment of any compensation for expropriation, or imposition of servitudes, necessary for the execution of the petroleum contract; and
 - (q) any further information the Minister of Natural Resources, Minerals and Energy Policy deems necessary for the smooth running of the tender.
2. The public notice shall, in relation to bidders comprised of groups of companies, include the following requirements:
- (a) proof of commitment to establish a group of companies, signed by all the companies that comprise the group, including an indication of the quota held by each company;
 - (b) without prejudice to joint and several liability to which all companies are subject, an indication of the leading company, the one which is answerable for the group and for carrying on petroleum operations (the operator);
 - (c) submission, by each of the companies of the group, of the documents required to assess their technical ability, economic and financial capability; and
 - (d) award of the petroleum contract conditioned by the filing of the founding document of the group of companies in Timor-Leste (joint operating agreement), under the law of Timor-Leste.
3. In relation to foreign companies taking part in the tender, whether individually or collectively, the public notice shall also require that they produce:
- (a) proof of technical ability, financial capability and legal and tax regularity, under the law of Timor-Leste;
 - (b) copy of the constitutive act and proof of the company's establishment and regular operation under the law of its country of origin;
 - (c) appointment of a legal representative with the Minister of Natural Resources, Minerals and Energy Policy, with special powers to practise each and every act and to assume responsibility for the submitted bid;
 - (d) where a petroleum contract is awarded, a written commitment to establish a company in accordance with the laws of Timor-Leste, with an administrative office to carry on operations in Timor-Leste, the signing

of such a contract being conditioned by the fulfilment of this requirement; and

- (e) in the case of paragraph 7.3(d), where the contract is awarded to a group of companies, the commitment in question refers to the leading company, the one which is responsible for the group and for carrying on petroleum operations (operator).

CHAPTER III BID ASSESSMENT PROCESS

Article 8 Assessment Committee

1. The assessment of submitted bids shall be made by an Assessment Committee (“the Committee”) consisting of an odd number of members, not fewer than 5 and not more than 9.
2. Committee members are appointed by the Minister of Natural Resources, Minerals and Energy Policy and include the Director of Petroleum, Gas and Energy.
3. Other Committee members may be appointed from among senior officials from the Ministry of Natural Resources, Minerals and Energy Policy and the Ministries responsible for finances, economy, environment, and justice, and may also include international experts of recognised experience and expertise in the petroleum sector.
4. Committee decisions are made in a plenary session by a majority vote, with a two-thirds quorum requirement, without prejudice to the creation, at a later stage of the bid assessment process, of working groups for the purpose of analysing specific aspects of bids, in preparation for a decision to be made in a plenary session.
5. In the absence of rules of procedure, the operating rules of the Committee are approved by the Committee before the bid assessment process is initiated, in which case the operating rules shall be published alongside the Assessment Report.
6. The date for the commencement of the Committee proceedings is set out in the public notice regarding the tender.

Article 9 Bid assessment

1. Bids shall be assessed on the basis of objective criteria, to be established and defined in a public notice, taking into consideration the objectives of the tender and in strict compliance with the principles of legality, justice, impartiality,

pursuit of the public interest, good faith, equality among bidders, and proportionality.

2. The purpose of the bid assessment process is to identify a bid that offers the best conditions and advantages to the State.
3. Without prejudice to other criteria to be established and defined by public notice, the assessment of bids shall be made by reference to proposed work programmes and procurement of local goods and services, training of nationals of Timor-Leste, transfer of technology, and infrastructural development projects in the petroleum sector of Timor-Leste.
4. In the event of a draw between two or more submitted bids, the Committee may decide on the basis of information contained in a record of performance of bidders with regard to efficiency, liability and technical ability in petroleum operations, occupational health and safety, environmental protection and preservation, good corporate citizenship, corporate liability, and greater technical ability to carry out petroleum exploration and exploitation under the specified conditions of the contract area concerned.
5. In case the draw persists, or if the Committee believes that it is not in possession of sufficient or relevant information to break a tie, the Committee shall, on the basis of the principles mentioned in subarticle 9.1, establish specific procedures for breaking a tie between two or more bids at the end of the first assessment.

Article 10 Reporting

1. Once the bid assessment process has been completed, the Committee shall prepare an Assessment Report (“the Report”), on each of the tendered contract areas, which shall include, namely:
 - (a) a recommendation for the marking of bids;
 - (b) the grounds for the recommendation made;
 - (c) a brief note on the assessment procedures adopted;
 - (d) any further information the Committee deems relevant to a decision approving the results of the tender;
2. The public notice regarding a given tender shall set a deadline for submitting the respective report.

Article 11 Approval of reports

1. The report is submitted to the Minister of Natural Resources, Minerals and Energy Policy within 3 business days of the date set under subarticle 10.2, for approval.

2. Subject to article 13, approval shall take place within 10 business days of receiving the report.
3. Refusal to approve the report by the Minister of Natural Resources, Minerals and Energy Policy may only take place after consultation with the Committee, and by a decision based on the violation of any of the principles set out in subarticle 9.1.
4. Refusal to approve the report shall result in the return of such report to the Committee for the purpose of further analysis in light of the grounds on which the refusal is based, and the Committee shall send a new report to the Minister of Natural Resources, Minerals and Energy Policy within 3 days of becoming acquainted with the grounds on which the refusal is based.

Article 12

Notification and publication

1. The results of the assessment of bids are notified to the bidders within 3 business days of the date of approval of the report.
2. The decision approving the report, a brief note on the results of the assessment of bids and a substantial summary of the report shall be published in the Official Gazette, and in the media as the Minister of Natural Resources, Minerals and Energy Policy deems it appropriate, within 10 business days of the date of approval.

Article 13

Challenge

1. Bidders for a given a contract area may file a claim against the approval decision regarding that contract area with the Minister of Natural Resources, Minerals and Energy Policy, and the right to do so must be exercised within 10 business days of the date of the publication referred to in subarticle 12.2.
2. The claim shall be filed in writing, together with an indication of the grounds therefor.
3. All other bidders for the contract area shall be notified of the contents of the claim in order that they may, if they so wish, make a pronouncement within 5 business days of receiving the notice.
4. A decision regarding the claim shall be made within 10 business days of the date of expiry of the deadline mentioned in subarticle 13.3, with an indication of the grounds therefor and covering any claims and/or allegations that may have been made by other bidders.
5. The decision referred to in subarticle 13.4, and the grounds therefor, are published in the Official Gazette, and in the media as the Minister of Natural

Resources, Minerals and Energy Policy deems it appropriate, within 15 business days of the date the decision is made.

6. Contentious challenges shall be regulated by the law of Timor-Leste.

CHAPTER IV FINAL PROVISIONS

Article 14 Entry into force

This Decree-Law shall come into force on day following the date of its publication.

Approved by the Council of Ministers on 24 August 2005.

The Prime Minister

[Signed]
(Mari Bim Amude Alkatiri)

The Minister of Natural Resources, Minerals and Energy Policy

[Signed]
(Mari Bim Amude Alkatiri)

Promulgated on 5 October 2005.

To be published.

The President of the Republic

[Signed]
(Kay Rala Xanana Gusmão)

ANNEX (...)
PRODUCTION SHARING CONTRACT: Mandatory Terms and Conditions

The following terms and conditions must form a part, without any material alterations thereto, of any Production Sharing Contract attached as an annex to a public notice regarding a public tender under the present regulation:

1. Where the contractor is a group of companies, the companies shall have to prepare and sign a joint operating agreement that will regulate the operations under the Production Sharing Contract. The Production Sharing Contract shall include any provisions necessary to ensure the right of the State to participate in petroleum operations, as defined below, namely with respect to the basic principles of the joint operating agreement, which shall be stipulated in an annex to the Production Sharing Contract.
2. The obligations and liability of each contractor under a Production Sharing Contract, exception being made to the State-Owned Contractor, are severally and jointly the obligations and liability of all contractors, exception being made to the State-Owned Contractor.
3. The contractor is granted the exclusive right to carry on petroleum operations, for the its sole account and at its own risk, and to share the petroleum produced in the contract area.
4. An exploration period of up to seven (7) years, with provisions relating to periodic relinquishments of some of the contract area at the end of the third and fifth years of exploration.
5. The right of the State to participate in petroleum operations up to a quota of 20%, this right being exercised under the terms of the law in case a commercial discovery declaration is made.
6. A 25-year period for the development and production of commercial discoveries.
7. Annual exploration, development and production work programmes and budgets to be approved by the Minister of Natural Resources, Minerals and Energy Policy.
8. Conditions under which the decommissioning and relinquishment plan of petroleum installations shall be carried out, and the contractors' obligations in this respect.
9. Obligations regarding the health, safety and welfare of the persons engaged in or affected by petroleum operations.
10. Obligations regarding the training and capacity building of, and giving preference in employment in petroleum operations to, nationals of Timor-Leste,

11. A 5% royalty for the State from the gross revenue of any petroleum produced.
12. Any recoverable costs that contractors are permitted to recover in connection with certain costs or expenses.
13. An annual uplift for contractors in connection with certain non-recovered costs and expenses.
14. Sharing of petroleum between the contractor and the State, after the contractor has fully recovered the costs incurred, at the rate of forty percent (40%) for the State, and sixty percent (60%) for the contractor.
15. Obligation to procure local goods and services, if mentioned by the State.
16. Confirmation that all data and information are the property of the State and that the State is entitled to copies of all data and information.
17. Third-party access to contract areas and installations.