

COUNCIL OF MINISTERS

DECREE NO 48/06

OF 1 SEPTEMBER

The Petroleum Activities Law (Law 10/04 of 12 November) explicitly accepted the principle of public tendering as a necessary and compulsory system for the award of status as an Associate of the National Concessionaire and also for contracting services and acquiring goods necessary for the execution of the petroleum operations.

Public tendering for the allocation of status as an Associate of the National Concessionaire although a current practice in the Angolan petroleum industry actually only became enshrined in law with Law 10/94 of 12 November which filled a gap existing until that time.

Furthermore the compulsory nature of the public tender when contracting for the provision of services and the acquisition of goods although stated in the concession statutes was not legally regulated but was only contained in contractual instruments entered into between the National Concessionaire and its associates for some petroleum concessions.

The aforesaid principle of compulsory public tendering is the instrument of preference for regulating in an ethical and transparent way competition between firms that legitimately intend to associate with the National Concessionaire for the execution of petroleum operations and also to provide services or supply goods necessary for the execution of the aforesaid operations.

Accordingly it being advantageous to lay down the rules and procedures governing public tenders within the field of petroleum operations;

Pursuant to Article 46 of Law 10/04 of 12 November and under the combined provisions of Article 112(f) and Article 113 both of the Constitutional Law the Government decrees as follows:

CHAPTER I

General Provisions

ARTICLE 1

(Object)

This decree sets out the rules and procedures governing public tenders for the acquisition of status as an Associate of the National Concessionaire on the basis of the provisions of Articles 44 and 45 of Law 10/04 of 12 November and also for the contracting of services and the acquisition of goods provided in the work programmes and approved budgets as provided by Article 30.1(f) of the aforesaid law.

ARTICLE 2

(Scope)

This decree applies to the National Concessionaire and to all national and foreign firms of proven fitness and technical and/or financial capacity that intend to associate with the National Concessionaire for the execution of the petroleum operations and also to entities contracting services and acquiring goods for the execution of the petroleum operations.

CHAPTER II

Acquisition of Status as Associate of the National Concessionaire

SECTION I

General Principle

ARTICLE 3

(Associate of the National Concessionaire)

The status of Associate of the National Concessionaire must be awarded in accordance with Article 44.4 of Law 10/04 of 12 November by public tender or direct negotiation.

SECTION II

Requirements for Associates of the National Concessionaire and the Operator

ARTICLE 4

(Requirements for Associates of the National Concessionaire other than the Operator)

1. Associates of the National Concessionaire other than operators must possess proven fitness and financial capacity demonstrated by presenting the evidence contained in the item below.
2. For the purposes of prequalifying with a view to becoming Associates of the National Concessionaire in accordance with the previous item firms must present the following information to the National Concessionaire:
 - a) their style or company name;
 - b) the place of incorporation registration and the address of their head office;
 - c) the most important activities carried on;
 - d) details of their asset structure in particular the values of own capital realisable assets and fixed assets and also of current liabilities;
 - e) references from suitable banking institutions attesting to their financial capacity;
 - f) annual reports on the activity carried out including the balance sheets and accounts for the last three years or since its incorporation where the investing entity has been incorporated less than three years ago audited by an independent firm of auditors with proven experience;
 - g) details of their experience in petroleum exploration and production including details of reserves and production;

- h) the number of workers employed and the professional experience of management in the area of petroleum exploration and production;
- i) details of legal and arbitration proceedings brought against them in the last five years;
- j) details of advance plans future obligations including work programmes or risks that may affect their capacity to fulfil the work programme that is established for the Angolan concessions of which it will form part;
- k) details of business activity carried out in Angola to date.

ARTICLE 5

(Requirements of the operator)

1. The operator of a petroleum concession must in addition to presenting the items referred to in item 2 of the previous article prove the following requirements:
 - a) that it has competence and experience in the management and execution of petroleum operations;
 - b) that it possesses technical and operational competence;
 - c) that it possesses an efficient organisational structure.
2. The operator may also present items relating to its experience in the execution of petroleum operations that it considers to be relevant for the consideration of its candidacy in particular in the fields of safety environmental protection prevention of situations of pollution and the employment integration and training of Angolan personnel.

ARTICLE 6

(Prequalification)

1. 60 days prior to the holding of the public tender referred to in Section III the National Concessionaire must in an announcement published in *Diário da República* in one of the largest circulation newspapers in Angola and on the National Concessionaire's website state the date on which it will hold the public tender identifying the areas which will be put out to tender and invite firms intending to bid in this which must be prequalified within 30 days following the date on which the announcement is published in *Diário da República* and/or in the largest circulation newspaper in Angola presenting the information indicated in Articles 4 and 5 of this decree.
2. If the tender is also aimed at non-Angolan firms the announcement referred to in the previous item must also be published in at least one international publication in the field.
3. With a view to diversifying foreign investment in the Angolan petroleum sector in areas of risk and with a lower level of investment the public tender may be limited to small or medium-sized petroleum firms as indicated in the prequalification announcement.

Small or medium-sized firms are understood to be those that do not form part of the limited number of the largest worldwide petroleum companies.
4. With the intention of promoting investment by Angolan entrepreneurs in the petroleum sector the public tender may also be wholly or partly limited to Angolan firms when so provided in the prequalification announcement.

5. For the purposes of this decree an Angolan firm is understood to be one which as a sole trader or in the form of a company has been legally and regularly constituted and established in Angola has its effective headquarters on national territory and which is wholly owned by Angolan citizens or where at least 51% of the share capital is held by Angolan citizens or Angolan firms exclusively or jointly.

6. Before announcing the prequalification for tenders in accordance with this article the National Concessionaire must obtain the appropriate authorisation from the Ministry with oversight.

SECTION III

Public Tender

ARTICLE 7

(Programme)

1. Whenever it intends to associate with third parties for the execution of petroleum operations the National Concessionaire must hold a public tender and for this purpose it must obtain the appropriate authorisation from the Ministry with oversight.

2. The announcement of the tender must be published in *Diário da República* in one of the largest circulation newspapers in Angola and on the National Concessionaire's website.

3. If the tender is open to non-Angolan firms the announcement must be published in at least one international publication in the field.

4. Only firms that have prequalified may bid individually or in a consortium.

5. In the case of firms bidding in a consortium the announcement of the tender must indicate whether the consortium must accept the full amount of the associative share made available to bidders and indicate the operator company or whether it may bid for part of the available associative share.

6. The announcement of the tender must specify in particular:

- a) the area of the concession;
- b) the specifications;
- c) the time limit for the presentation of bids which must not be longer than 90 days from the date of publication of the announcement in *Diário da República* and/or in the largest circulation newspaper in Angola whichever occurs first;
- d) the list of firms that have prequalified;
- e) the form of contract to be entered into between the National Concessionaire and its associates;
- f) whether firms can bid individually or in a consortium or do so in both forms.

7. The terms of reference of the tender must be previously approved by the Ministry with oversight at the proposal of the National Concessionaire.

ARTICLE 8

(Presentation of bids)

1. Bids must be written in the Portuguese language or in another language however in this case they must be accompanied by an official translation into the Portuguese language.

2. Bids in a closed envelope sealed with wax must be presented by the closing date stated in the announcement of the tender.

ARTICLE 9

(Opening and consideration of bids)

1. On expiry of the time limit laid down for the presentation of bids they must be opened on the first working day following in a public ceremony.
2. The public ceremony will take place before a panel the composition of which must be previously approved by the Minister with oversight at the proposal of the National Concessionaire and include a representative of the National Concessionaire who will chair it a representative designated by the Ministry with oversight and a representative designated by the Ministry of Finance.
3. The panel must check that the documentation presented by bidders complies with the requirements stated in the announcement and proceed with the consideration of the bids considered to be valid.

ARTICLE 10

(Deficiencies and irregularities)

When the bids presented are found to contain deficiencies or irregularities the panel must notify the interested parties by facsimile or registered letter with advice of receipt requiring them to make good the irregularities or deficiencies found within 15 days from the date of receipt of the notification otherwise they will be excluded from the tender.

ARTICLE 11

(Award)

1. The panel must proceed with the appraisal of the bids presented and accepted within a time not longer than 30 days from the date of opening of bids.
2. The appraisal by the panel must be based on objective criteria and pay special attention to the factors contained in the specifications.
3. Once the appraisal has been made the panel must present the respective results together with the proposed award to the National Concessionaire for approval.
4. The award of the tender must be notified officially to all bidders and be the subject of an announcement to be published in *Diário da República* in one of the largest circulation newspapers in Angola and on the Concessionaire's website.

ARTICLE 12

(Tender for the election of the other Associates of the National Concessionaire)

1. If only the operator is selected in the tender referred to in the previous articles the National Concessionaire must hold a second public tender for the selection of its other associates.
2. The firms that took part in the tender for the operator and were unsuccessful and also other firms of proven fitness and financial capacity that have shown an interest and have been prequalified must be invited to the second tender.
3. The announcement of the second tender and its procedures must comply with the stipulations of Articles 7 8 9 10 and 11 of this statute. The announcement must state

the conditions proposed by the operator that determined its choice as the successful candidate in the first tender together with the time limits for presentation of bids.

4. The selection factor of the second public tender referred to in this article may consist of a supplementary financial consideration in favour of the State.

ARTICLE 13

(Appeal)

1. Bidders who consider themselves to have been damaged by the decision of the panel may appeal against this within 15 days from the date of public announcement of the decision.

2. The appeal must be made to the Minister with oversight who must decide finally within 15 days from the date of receipt of the appeal.

SECTION IV

Negotiating Committee

ARTICLE 14

(Negotiating Committee)

1. After deciding on the award of the tenders referred to above a Negotiating Committee must be set up to include members from the Ministry with oversight the Ministry of Finance and the National Concessionaire which will have the following responsibilities:

a) to give final shape in negotiations with the selected Associates of the National Concessionaire to the contract to be entered into for the execution of the petroleum operations which must be signed by the Chairman of the Negotiating Committee and by the representative of the Associates of the National Concessionaire within a maximum time of 90 days from the date of appointment of the Negotiating Committee;

b) to send to the Ministry with oversight the Ministry of Finance and the National Concessionaire a report on each negotiating session eight days following its completion which must be sent to the Government by the Ministry with oversight for information purposes and in order to allow monitoring of the negotiating process;

c) to submit to the Ministry with oversight within 30 days following the signature of the contract referred to in the previous subitem all the documentation necessary for the award of the petroleum concession in particular the report on the negotiations the draft decree of concession and the contract negotiated in order for them to be submitted for Government approval.

2. The time limits referred to in the subitems of the previous item may be extended by the Ministry with oversight upon a reasoned request by the Chairman of the Negotiating Committee.

3. The Chairman of the Negotiating Committee will be appointed by the National Concessionaire.

CHAPTER III

Tenders for the Contracting of Services and Acquisition of Goods

ARTICLE 15

(General Principle)

1. Except in the case provided in Article 16.2 the operator must put out to public tender in the following terms the contracting of services and the acquisition of goods necessary for the execution of the petroleum operations.
2. For the purposes of the previous item the operator must announce the holding of the tender in one of the largest circulation newspapers in Angola and on its website identifying the goods and services it intends to acquire and also the conditions governing participation.
3. If the tender is also aimed at non-Angolan companies the announcement must also be published in at least one international publication in the field.

ARTICLE 16

(Rules governing contracting)

1. The operator must in all situations where services are contracted or goods are acquired for the execution of the petroleum operations and irrespective of the value of the contract respect the principle of competitiveness by holding prior consultations with at least three different firms in the case provided in item 2 of this article and in other cases by holding public tenders in accordance with the remaining items of this article.
2. Up to the amount of USD 250 000.00 or an equivalent value in national currency the operator shall be free to sign contracts however it must inform the National Concessionaire quarterly of contracts entered into for a value lower than that stated and also the firms involved in them^[1].
3. For contracts of value comprised between USD 250 000.00 and USD 750 000.00 or an equivalent value in national currency the operator must hold public tenders to which the prequalified firms stated in a general list of firms susceptible of being contracted for this purpose to be approved by the National Concessionaire at the proposal of the operator must be invited. The list must be as wide as possible in order to allow the greatest competitiveness in tendering.
4. In the notice of tender the operator must ask bidders to present both technical and financial aspects in their bids.
5. As soon as the operator has completed the consideration of the bids it must inform the National Concessionaire in detail about the bidders in the tender their bids and also the reasons that led to the proposal for the award.
6. The National Concessionaire shall have 30 working days in which to object to the operator's proposal and if it does not do so within that time it will be deemed to have accepted it.
7. In the case where the value of the contract exceeds USD 750 000.00 or the equivalent value in national currency the operator in addition to being required to comply with the obligations set out in the previous items adapted as necessary must:
 - a) obtain the prior approval of the National Concessionaire of the list of prequalified firms invited to bid which must be as wide as possible and also the documents and their contents to be included in the specification. Approval by the National Concessionaire will be considered to have been given automatically if no objection is

notified to the operator within 15 working days following the date of receipt of the aforesaid documentation;

b) make arrangements to ensure that two sealed copies of the bidders' bids are delivered in Luanda these being considered as the official bids. The operator must notify the National Concessionaire of the time and place of the opening of bids a minimum of seven working days in advance;

c) inform the National Concessionaire of details of the bids received and their evaluation including technical and commercial specifications and also any justified alterations to the terms scope or technical conditions arising from the specifications of the contract equipment or work;

d) conduct negotiations with potential contractors during the process of bidding and award of the contract and send in writing to the National Concessionaire a detailed evaluation of the bids and also a reasoned recommendation regarding the bidder to be selected;

e) following approval by the National Concessionaire award and sign the contract with the 'bidder with the lowest-priced bid' this being understood to mean the bidder whose bid is in all essential points in accordance with the specification and which when analysed from a technical and operational point of view and subject to the same Angolan fiscal charges results in the bid with the lowest comparative value after clarification and equalisation;

f) the real value of the bid referred to in the previous subitem must take account of financing where applicable and where requested by the National Concessionaire or the operator the time limits exchange rate variations and direct losses of production revenue which may result from the different completion dates of work.

g) account must be taken of the provisions of the law relating to the preference which must be given to services and goods of domestic origin when determining the 'bidder with the lowest-priced bid'.

8. Unless there is a decision to the contrary of the National Concessionaire the operator shall have six weeks following the opening of the bids presented in tenders to proceed with their consideration and to submit to the National Concessionaire the evaluation of bidders and its recommendation.

9. The Ministry with oversight must prepare and keep up to date a list of Angolan firms providing services and supplying goods to the petroleum operations and they are required to be consulted by operators when tenders are held related with their activity.

10. The operator must obtain approval from the National Concessionaire for any revision of the contracts it has awarded in accordance with this statute if the original value of that revision in isolation or on an accumulated basis should exceed 10% of the original value or should involve a significant change in either the scope or the

duration of the project. This approval must be considered to be granted if no objection is notified to the operator within 21 working days from the date of receipt by the National Concessionaire of the application for approval of the revision.

CHAPTER IV

Final Provisions

ARTICLE 17

(Nullity)

Contracts entered into for the execution of the petroleum operations between the Concessionaire and its associates and between the operator and the providers of services and supplies of goods that do not comply with the provisions of this statute shall be void.

ARTICLE 18

(Safeguarding of prior situations)

This statute shall be without prejudice to the validity and efficacy of public tenders held prior to the date of its entry into force.

ARTICLE 19

(Doubts and omissions)

Any doubts or omissions arising from the application and interpretation of the present Decree will be resolved by the Council of Ministers.

ARTICLE 20

(Entry into Force)

This decree comes into force on its publication date.

Seen and approved at the Council of Ministers at Luanda on 31 August 2005.

The Prime Minister Fernando da Piedade Días dos Santos.

Promulgated on 25 August 2006.

The President of the Republic JOSÉ EDUARDO DOS SANTOS

^[1] Reading 'as' for 'à'; as the sentence stands it means: '... the operator shall be free to sign contracts however it must inform the National Concessionaire and also the firms involved in them quarterly of contracts entered into for a value lower than that stated. - Translator