

DIÁRIO DA REPÚBLICA
OFFICIAL GAZETTE OF THE REPUBLIC OF ANGOLA

CONTENTS

President of the Republic

Presidential Decree 86/18:

Lays down the rules and procedures for tenders for acquisition of the status of Associate of the National Concessionaire and for the procurement of goods and services in the Petroleum Sector. – Repeals all legislation contrary to this Statute, in particular Decree 48/06 of 1 September.

PRESIDENT OF THE REPUBLIC

**Presidential Decree 86/18
of 2 April**

Whereas Decree 48/06 of 1 September lays down the Rules and Procedures for Public Tenders in the Petroleum Sector, as a necessary and mandatory process for granting the status of Associate of the National Concessionaire, and also for the procurement of services and the acquisition of goods necessary for the execution of petroleum operations;

Taking into account that the said Decree establishes a period greater than 1 (one) year from the commencement to the completion of the process of granting the status of Associate of the National Concessionaire;

It being necessary to drive forward the process of granting the status of Associate of the National Concessionaire, in such a way that this will take place in a shorter time, allowing greater frequency in the award of new areas;

Also having regard to the aim of safeguarding the public interest relating to the petroleum industry by simplifying and speeding up processes, and concomitantly, achieving greater efficiency in petroleum production, there is a need for changes in application processing times, and also an increase in the limits for the approval of contracts by the National Concessionaire according to their value;

Taking into account the provisions of articles 44, 45 and 95 of Law 10/04 of 12 November, on Petroleum Activities;

The President of the Republic decrees, in accordance with article 120(l) and article 125.3, both of the Constitution of the Republic of Angola, as follows:

CHAPTER I
General Provisions

ARTICLE 1
(Object)

This Statute establishes the Rules and Procedures for Tenders for Acquisition of the Status of Associate of the National Concessionaire and for the Procurement of Goods and Services in the Petroleum Sector.

ARTICLE 2
(Scope)

1. This Statute applies to the National Concessionaire, and to all national or foreign entities of proven fitness, and technical and financial capacity intending to associate with the National Concessionaire for the execution of petroleum operations.

2. This Statute also applies to entities contracting services and acquiring goods for the execution of petroleum operations.

CHAPTER II
Public Tender for the Acquisition of the Status of Associate of the National Concessionaire

ARTICLE 3
(Associate of the National Concessionaire)

The status of Associate of the National Concessionaire must be granted in accordance with article 44.2, 44.3 and 44.4 of Law 10/04 of 12 November, on Petroleum Activities, by a public tender or by direct negotiation.

ARTICLE 4
(Requirements for a Non-Operator Associate of the National Concessionaire)

1. Companies bidding to be Associates of the National Concessionaire must prove their fitness and financial capacity by submitting the following information:

- a) their style or company name;
- b) their place of incorporation, registration and the address of their registered office;
- c) the main activities carried on;
- d) detailed information on their equity structure, in particular the amounts of own capital, realisable assets and fixed assets, and also of their liabilities;
- e) comfort letter from suitable banking institutions, supporting their financial capacity;

- f) annual reports of the activity carried on including the Balance Sheet and Profit and Loss Account for the last 3 (three) years, or from their incorporation, if the investing entity was incorporated less than 3 (three) years ago, audited by an independent firm of auditors with proven experience;
- g) detailed information regarding their experience in hydrocarbons exploration and production, including details of reserves and production;
- h) the number of workers employed and the professional experience of the management personnel in the area of hydrocarbons exploration and production;
- i) detailed information on judicial and arbitral proceedings brought against it in the last 5 (five) years;
- j) detailed information on anticipated plans, future obligations, including work programmes or risks which may cause an impact on their ability to fulfil the work programme which may be established for the Angolan concessions of which it will form part;
- k) detailed information on the business activity carried on in Angola until the date of presentation of the candidacy.

ARTICLE 5

(Requirements for an Operator Associate of the National Concessionaire)

1. Save as provided in item 2 of the previous article, a bidder to be an operator of a petroleum concession must prove the following requirements:

- a) have competence and experience in the management and execution of petroleum operations;
- b) possess technical and operational competence;
- c) possess an efficient organisational structure;
- d) present information on safety, environmental protection, prevention of situations of pollution and the employment, integration and training of Angolan personnel.

ARTICLE 6

(Public tender programme)

1. Whenever the National Concessionaire wishes to associate with third parties for the execution of petroleum operations, in accordance with the General Strategy of Tendering of the Republic of Angola, it must invite to a public tender and for this purpose it must obtain proper authorisation from the Ministerial Department responsible for the Petroleum Sector.

2. In order to diversify foreign investment in the Angolan Petroleum Sector in areas of less risk and a lower level of investment, the public tender may be limited to small or medium-sized petroleum enterprises, as indicated in the announcement of invitation to tender.

3. For the purpose of the previous item, small or medium-sized enterprises shall mean those which do not form part of the limited cluster of major worldwide petroleum companies.

4. With the intention of promoting investment by Angolan business in the Petroleum Sector, the public tender may also be wholly or partially limited to Angolan enterprises, as provided in the announcement of invitation to tender.

5. An Angolan enterprise shall mean an enterprise which, as a sole trader or in a corporate form, is legally and regularly constituted and established in Angola, has its effective registered office in the national territory, and is wholly owned by Angolan citizens or in which at least 51% of the share capital is held by Angolan citizens or Angolan enterprises, exclusively or jointly.

6. The announcement of the tender must be preceded by an announcement of the intention to launch the tender, and both must be published in *Diário da República* and/or in one of the widest circulation newspapers in Angola and on the Internet gateway of the National Concessionaire.

7. If the tender is also aimed at foreign enterprises, the announcements must also be published in at least one international publication of worldwide scope.

8. The announcement of the intention to launch the tender must be published at least 120 (one hundred and twenty) days in advance of the launch of the tender, and must contain the following:

- a) the official date of the launch of the public tender;
- b) the areas to which the tender relates;
- c) the scope of the public tender (unrestricted for any enterprise or limited to Angolan and/or foreign enterprises and to small, medium-sized or large enterprises).

9. The launch of the public tender must take place simultaneously with the publication of the terms of reference, rules of the tender and requirements for qualification of enterprises, and the announcement must specify the following:

- a) the concession area;
- b) terms of reference;
- c) the time limit for presentation of the proposals, which may not exceed 40 (forty) days from the date of publication of the announcement of launch of the tender in *Diário da República* and/or in the widest circulation newspaper in Angola and internationally, whichever occurs first;
- d) the form of the contract to be entered into between the National Concessionaire and its associates;
- e) whether the enterprises can bid individually, in a consortium, or do so in both forms;
- f) the list of requirements for the qualification of enterprises wishing to become associates of the National Concessionaire (elements presented in articles 4 and 5 of this Statute) and the time limit for delivery of the documentation associated with these, and this time

limit may not exceed 40 (forty) days from the date of publication of the announcement of launch of the tender.

10. The terms of reference of the public tender must be previously approved by the Ministerial Department responsible for the Petroleum Sector, at the proposal of the National Concessionaire.

11. A model proposal which will serve as a basis for the bidding enterprises must be published on the Internet gateway of the National Concessionaire.

12. Submission of the proposals must be made in the following way:

- a) they 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;
- b) they must be submitted in a closed and wax-sealed envelope, within the time limit indicated in the announcement of the tender, following the model published at the time of launch.

ARTICLE 7 (Opening of proposals)

1. When the time limit established for submission of the documentation relating to the public tender (qualification requirements and proposals) has expired, the opening of the proposals on the first working day following must take place in a public act.

2. The public act will be held before a panel, the composition of which must be previously approved by the Ministerial Department responsible for the Petroleum Sector, at the proposal of the National Concessionaire and it will consist of one representative of the National Concessionaire, who will act as Chairman, one representative designated by the Ministerial Department responsible for the Petroleum Sector and one representative designated by the Ministry of Finance.

3. The panel must verify the procedural conformity of the documentation submitted by the bidders with the requirements contained in the announcement and evaluate the proposals considered to be valid.

ARTICLE 8 (Deficiencies and irregularities)

Where deficiencies or irregularities are found to exist in the proposals submitted, the panel must notify the interested parties by fax, e-mail or registered letter with advice of receipt in order that they may, within 10 (ten) days from the date of receipt of the notification, make good the irregularities or deficiencies found, otherwise they will be excluded from the tender.

ARTICLE 9 (Consideration and award)

1. The panel must proceed with the evaluation of the proposals submitted and accepted, and also of the qualification requirements, within a period not exceeding 45 (forty-five) days from the date of opening of the proposals.

2. The evaluation by the panel must be based on objective criteria, paying particular attention to the factors contained in the Terms of Reference.

3. When the evaluation has been carried out, the panel must submit, on the first working day following, its results, and also the proposal of award to the National Concessionaire which must, within a period not exceeding 10 (ten) days from the date of submission, approve the results and submit them to the Ministerial Department responsible for the Petroleum Sector for consideration and approval.

4. The award of the tender must be officially notified to all tenderers and must form the subject of an announcement to be published in *Diário da República* and/or in one of the widest circulation newspapers in Angola, an international publication (where applicable) and on the Internet gateway of the National Concessionaire, within a period not exceeding 20 (twenty) days from the end of the time limit for the evaluation of proposals.

ARTICLE 10

(Tender for selection of 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 launch a second public tender for the selection of the other associates.

2. The enterprises which bid in the tender for the operator and were not selected must be invited to the second tender, and also other enterprises of proven fitness and financial capacity which have shown an interest and have been qualified.

3. The announcement of the second tender and its processing must comply with the stipulations of articles 6, 7, 8 and 9 of this Statute.

4. The announcement must state the conditions proposed by the operator which determined its choice as the successful bidder in the first tender, and also the time limits for the submission of proposals.

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

ARTICLE 11

(Appeal)

1. Bidding enterprises which consider themselves to have been damaged by the panel's decision may appeal against this within 5 (five) days from the date of the public announcement of the decision.

2. The appeal must be lodged with the Ministerial Department responsible for the Petroleum Sector, and it must decide this finally within five days from the date of receipt of the appeal.

ARTICLE 12 (Negotiating Committee)

1. After deciding the award of the tenders referred to above, a Negotiating Committee must be created within a maximum period of 5 (five) days from the award of the tender, and this will include elements from the Ministerial Department responsible for the Petroleum Sector, the Ministry of Finance and the National Concessionaire, and it will have the following responsibilities:

- a) to give final form, in negotiation with the selected Associates of the National Concessionaire, to the contract to be entered into for the execution of the petroleum operations, and this must be initialled by the Chairman of the Negotiating Committee and by the representative of the Associates of the National Concessionaire within a maximum time of 65 (sixty-five) days from the date of appointment of the Negotiating Committee;
- b) to submit to the Ministerial Department responsible for the Petroleum Sector, the Ministry of Finance and the National Concessionaire the report on each negotiating session, 8 (eight) days after the end of this, which must be sent to the Government by the Ministerial Department responsible for the Petroleum Sector, for knowledge and follow-up of the negotiating process;
- c) to submit to the Ministerial Department responsible for the Petroleum Sector, within a maximum period of 20 (twenty) days following the initialling of the contract referred to in the previous subitem, all the documentation necessary for the granting of the petroleum concession, in particular the report on the negotiations, the draft decree of concession and the negotiated contract, in order to be submitted to the Government for approval.

2. The time limits referred to in the subitems of the previous item may be extended by the Ministerial Department responsible for the Petroleum Sector, upon a well-founded request by the Chairman of the Negotiating Committee.

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

CHAPTER III Tenders for Procurement of Services and Acquisition of Goods

ARTICLE 13 (General principle)

1. The operator must put to public tender, in the following terms, the procurement of services and acquisition of goods necessary for the execution of the petroleum operations, except in the case specified in article 15.2 of this Statute.

2. For the purpose of the previous item, the operator must, in one of the widest circulation newspapers in Angola and on its Internet gateway, announce the launch of the tender, identifying the goods and services it intends to acquire, and also the conditions for participation.

3. If the tender is also destined for foreign companies, the announcement must also be published on the operator's Internet gateway.

ARTICLE 14 (Submission of proposals for procurement)

1. Bidders' proposals 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. The proposals must be submitted in a closed and wax-sealed envelope within a maximum period of 120 (one hundred and twenty) days, and this period must be indicated in the announcement of the tender.

ARTICLE 15 (Rules of procurement)

1. The Operator must, in all situations of procurement of services and the acquisition of goods for the execution of petroleum operations and irrespective of the value of the contract, follow the principle of competitiveness, by making, in the case specified in item 2 of this article, a prior consultation with different enterprises and, in the case specified in item 5 of this article, by launching public tenders on the terms defined therein.

2. Up to the amount of USD 1,000,000.00 (one million United States dollars), or the equivalent value in national currency, the Operator shall be free to sign contracts without a tender and without approval from the National Concessionaire, however it must inform the National Concessionaire quarterly about contracts entered into, and also the enterprises involved in these.

3. For contracts of a value above USD 1,000,000.00 (one million United States dollars) and up to USD 5,000,000.00 (five million United States dollars), or the equivalent value in national currency, in a time horizon of up to 5 (five) years, the Operator must hold a public tender without approval from the National Concessionaire, and will be free to award the contracts, without the approval of the National Concessionaire, and in the meantime it must inform the National Concessionaire quarterly about contracts entered into of a value within the range indicated, and also the enterprises involved in these.

4. In the notice of tender, the Operator must request tenderers to present the technical and financial aspects in their proposals.

5. In the case where the value of the contract exceeds USD 5,000,000.00 (five million United States dollars) or the equivalent value in national currency, the Operator must hold a public tender, complying with the following obligations:

- a) to obtain prior approval from the National Concessionaire of the list of the enterprises bidding, which must be the widest possible, and also of the documents and their content to be included in the specification, and it must be considered to be automatically approved within 30 (thirty) working days from the date of receipt of said documentation;
- b) to make arrangements so that two sealed copies of the bidders' proposals will be delivered in the Province of Luanda, and these will be considered to be the official proposals. The Operator must notify the National Concessionaire a minimum of 7 (seven) working days in advance of the time of opening of the proposals, which must take place at the facilities of the National Concessionaire. If the National Concessionaire does not have availability to perform the opening of the proposals at its facilities on the date and/or at the time proposed by the Operator, it must propose a new date and/or time, and in any case the postponement may not be greater than 5 (five) working days;
- c) to inform the National Concessionaire of the details of the proposals received and their evaluation, including the technical and commercial specifications of these, and also any justified alterations of the terms, scope or technical conditions arising from those specifications. The proposals must be clarified in such a way as to take into consideration the contractual specifications for equipment or labour;
- d) to conduct negotiations with potential contracted parties during the process of proposals and award of contract and submit in writing to the National Concessionaire a detailed evaluation of the proposals of the tenderers, and also a reasoned recommendation of the tender to be selected;
- e) after approval by the National Concessionaire, to award and sign the contract with the "bidder of the lowest cost proposal", this being understood to be the bidder whose proposal is, on 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 tax charges, will result in the proposal with the lowest comparative value, after clarification and equalisation;
- f) the real value of the proposal referred to in the previous subitem must take account of the financing, where applicable, and where it has been requested by the National Concessionaire or by the Operator, the time limits, foreign exchange variations and direct losses of production revenue which may result from different dates of completion of the work;
- g) the provisions in the law on the preference to be given to services and goods of national origin must be considered when determining the "bidder with the lowest cost proposal".

6. Unless otherwise decided by the National Concessionaire, the Operator will have 12 (twelve) weeks after the opening of the proposals submitted in the tenders referred to in the previous item of this article in which to perform their analysis and submit to the National Concessionaire the evaluation of the tenderers and its recommendation.

7. The National Concessionaire must expressly approve or refuse the Operator's recommendation, within a maximum period of 60 (sixty) days from receipt of the documentation referred to in the previous item. When the established time limit has ended, if the National Concessionaire does not send to the Operator an express approval or prior notice of a refusal of approval, in accordance with the following item, the Operator's recommendation will be considered to be automatically approved.

8. If the National Concessionaire intends to refuse the approval of any contract, it must send the Operator prior notice of refusal of approval, within the time limit established in the previous item, detailing the reasons for this, in order to allow the Operator to make a statement. Within a period not exceeding 15 (fifteen) days from receipt of the prior notice, the Operator must submit to the National Concessionaire all appropriate information to make good the deficiencies of the original proposal of approval or to clarify any aspects raised in the notice, in order to permit approval of the contract. The National Concessionaire must take a reasoned final decision within a maximum period of 90 (ninety) days from receipt of the original proposal of approval. When this time limit has passed, the Operator's recommendation will be considered to be automatically approved.

9. The award of the contract in the tenders referred to in item 5 of this article will not take place in the following cases:

- a) when no proposal has been submitted;
- b) when all the proposals have been excluded because they do not include the documents requested in the tender;
- c) when, owing to unforeseen circumstances, it is necessary to alter fundamental aspects of the documents of the tender after the end of the period for submission of proposals;
- d) when the interest of the Operator requires the postponement of the tender for a period of not less than one year;
- e) when, by virtue of the occurrence of supervening circumstances, the Operator ceases to have the necessity of acquisition of the goods and/or services;
- f) when, by means of a duly reasoned decision, the National Concessionaire does not go ahead with approval of the contract, except in cases of automatic approval or in cases in which the Operator considers that the contract is necessary to maintain the stability of the operations and the safety of the equipment, installations and safety of the personnel;
- g) when the operator does not comply with the provisions of item 6 of this article and does not present a reason for non-compliance to the National Concessionaire.

10. The decision not to award, and also the grounds for this, must be notified in writing to all interested parties.

11. In the case of item 9(c) of this article, it is compulsory to commence a new tender within a maximum period of 6 (six) months from the date of notification of the decision not to recommend.

12. In the case of item 9(d) of this article, the Operator will fix the time of the postponement, and it will be required to commence a new tender at the end of that period.

13. A public tender for the procurement of services and acquisition of goods for the execution of petroleum operations, irrespective of the value of the contract, is not required in the following cases:

- a) in the case where an emergency occurs in the course of the petroleum operations, requiring an immediate response by the Operator, subject to presentation to the National Concessionaire of all the information and all the data necessary in order to demonstrate the emergency situation and the necessity of immediate action;
- b) in situations in which it has been proved, for technical reasons, that the services to be contracted and the goods to be acquired may only be provided or supplied by a single supplier in the market.

14. The Ministerial Department responsible for the Petroleum Sector must prepare and keep up to date a list of Angolan entities providing services and supplying goods to petroleum operations, which must be compulsorily consulted by the Operators at the time of holding tenders related with their activity.

15. The Operator must obtain approval from the National Concessionaire for the revision of the contract subject to item 5 of this article, if the original value of the revision, in isolation or cumulatively, exceeds 10% of the original value, or involves a significant change in either the scope or duration of the project. This approval must be considered to be granted unless an objection, stating reasons, is notified to the Operator within 21 (twenty-one) working days from the date of receipt by the National Concessionaire of the request for approval of the revision.

CHAPTER IV Final Provisions

ARTICLE 16 (Nullity)

Contracts entered into for the execution of petroleum operations between the Concessionaire and its associates and between the Operator and providers of services and suppliers of goods which do not comply with the provisions of this Statute are null and void.

ARTICLE 17

(Previously approved tenders)

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 18
(Repeal)**

All legislation contrary to this Statute, in particular Decree 48/06 of 1 September, is repealed.

**ARTICLE 19
(Doubts and lacunae)**

Any doubts and lacunae arising in the interpretation and enforcement of this Presidential Decree will be resolved by the President of the Republic.

**ARTICLE 20
(Entry into force)**

This Statute will come into force on its publication date.

Considered at the Council of Ministers, at Luanda on 28 February 2018.

To be published.

Luanda, 20 March 2018.

The President of the Republic, JOÃO MANUEL GONÇALVES LOURENÇO.