



DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

Government Decree 7/2005

of 19 of October

BIDDING ROUNDS FOR THE AWARD OF PETROLEUM CONTRACTS

Preamble

The Law of 13/2005, of 02 of September (*Petroleum Act*) determines how an authorisation is obtained, including the award of the petroleum contracts, which must be, as a general rule, preceded by the bidding round. This Act also allows the Government to pass Decree-Law concerning matters relating to petroleum operations, including petroleum exploration and production. It is therefore necessary to regulate the process of the bidding round for the award of petroleum contracts.

Therefore, under article 13 of the Law 13/2005, of 02 of September (*Petroleum Act*), in conjunction with paragraph (b), of number 1, of article 31 of the same Act, and also in consideration of article 10 of the same Act, the Government enacts the following to have the force of regulation:

CHAPTER I GENERAL PROVISIONS

Article 1 Scope

The present regulation establishes the general proceedings applicable in the bidding round for the adjudication of the contract areas and the awarding of petroleum contracts referred to in article 10 of the Law 13/2005, of 02 of September (*Petroleum Act*).

Article 2 Objective of the bidding round

The bidding round conducted under the terms of the present Decree-Law has as an objective the selection of companies, and/or groups of companies, with whom the

Government shall sign petroleum contracts for the development of petroleum operations in defined areas.

Article 3

Petroleum contract

1. The petroleum contracts to be signed with the selected companies and/or groups of companies are in the form of a Production Sharing Contract.
2. The Production Sharing Contract utilised in the bidding round conducted under the terms of the present Decree-Law shall be published in an annex to the tender protocol for each bidding round. The terms and conditions found in Annex 1 of this regulation are a compulsory part of the Production Sharing Contract to be annexed to the tender protocol.
3. The tender protocol for each bidding round shall stipulate that participation in the bidding round is considered as an express acceptance by the applicants of the terms of the Production Sharing Contract annexed to the tender protocol.

Article 4

Proposals

1. The selection of a company, or groups of companies, referred to in article 2 shall be based on the proposals presented, and is subject to the Law 13/2005, of 02 of September (*Petroleum Act*), the present regulation and the tender protocol issued by the Minister for Natural Resources, Minerals and Energy Policy for each bidding round entered into.
2. The proposals shall be for a contract area, and there shall not be proposals which refer simultaneously to more than one contract area.
3. The presentation of more than one proposal for a contract area by a company, singly or in a group of companies, is prohibited.
4. The Minister for Natural Resources, Minerals and Energy Policy shall establish through regulation the internal procedures for the receipt, custody and the opening of the submitted proposals.
5. The applicant company may be required, on request by the Minister for Natural Resources, Minerals and Energy Policy, to provide additional information.

Article 5

Language for the bidding round

Without prejudice to the existing laws concerning the use of the official languages, the bidding round under the terms of the present regulation may be conducted in the English language.

CHAPTER II TENDER PROTOCOL

Article 6 Publicising by tender protocol

1. The commencement of the bidding round for the award of petroleum contracts shall be publicised by a provisional tender protocol, to be published in the *Jornal da Republica*, as well as through the media as approved by the Minister for Natural Resources, Minerals and Energy Policy, a minimum of fifteen (15) days prior to the commencement date of the Bidding Round.
2. The final and definitive tender protocol, to be published also in the *Jornal da Republica*, as well as through the media as approved by the Minister for Natural Resources, Minerals and Energy Policy, is to be published at a minimum of forty-five (45) days prior to the closing date for the submission of the proposals.

Article 7 Contents of tender protocol

1. The tender protocol referred to in the previous article shall state that the entity organising the bidding round is the Minister for Natural Resources, Minerals and Energy Policy and shall regulate the following matters:
 - a) forms to be filled and the structure of the proposals to be submitted (indicating the necessary documents and the formal requirements, the annexes to be included, and the required details for the information solicited);
 - b) contract areas to be awarded, through the signing of petroleum contracts, defined by geographical coordinates and illustrated in adequate maps;
 - c) proposed minimum exploration work programme to be guaranteed (years 1 to 3) and subsequent exploration work programme (years 4 to 7);
 - d) State participation in petroleum operations in the contract areas adjudicated, with prescribed terms of the participation to be assured under the Production Sharing Contract;
 - e) documents required for access to the bidding round;
 - f) criteria to be followed in the assessment of the technical, financial and legal qualifications of the applicant companies;
 - g) technical and economic-financial evaluation of the proposals submitted;
 - h) deadline, venue and timetable for supplying to interested parties, the data, studies and other elements and information necessary for the elaboration of the proposals, as well as the cost of their acquisition, and provide information and contact details for the obtainment of other information;

- i) deadline, venue (address) and form for presentation of the proposals;
 - j) criteria for the decision-making on the proposals, and the bases and form for assessment of such criteria;
 - k) procedural aspects for the adjudication of areas for the award of a petroleum contract;
 - l) appeals concerning the results of the bidding round;
 - m) the provision of a comprehensive schedule for the entire process up to the commencement of exploration;
 - n) applicable fees, including an application fee which is not reimbursable;
 - o) guarantees and bonds to be presented by the applicants;
 - p) payment in the event of compensation that will be owed by expropriation, or imposition of servitudes, necessary to fulfil the petroleum contract; and
 - q) any other information deemed by the Minister for Natural Resources, Minerals and Energy Policy as necessary for the normal course of the bidding round.
2. The tender protocol shall include, in relation to the applicants which are a group of companies, the following requirements:
- a) proof of a joint venture agreement between the companies, subscribed to by all the parties which make up the joint venture, including an indication of the shares of each company;
 - b) without prejudice to the liability which is joint and several to all companies, an indication of the operator, responsible for conducting petroleum operations on behalf of the group;
 - c) present on behalf of each company in the group, the documents called on to effect the evaluation of the technical and economic-financial qualification; and
 - d) the signing of petroleum contracts are conditional on the registration of the joint venture agreement in Timor-Leste, under the terms of Timor-Leste law.
3. The tender protocol shall require foreign companies, who apply either as an individual or in a group to present:
- a) proof of technical capacity, financial capability and fiscal and legal regularities, under the terms of the laws in force in Timor-Leste;

- b) copies of the article of incorporation and proof of the current activities of the companies and its regular functions, in accordance with the laws of the country of origin;
- c) nomination of a legal representative before the Minister for Natural Resources, Minerals and Energy Policy , with the power to act in relation to all acts and the assumption of all responsibilities in relation to the proposal presented;
- d) commitment to, in the case of the award of petroleum contracts, establish the company under the laws of Timor-Leste, with an office for administration and conduct of operations in Timor-Leste, which is a condition precedent for the award of the petroleum contract; and
- e) in the case of the above paragraph, if the petroleum contract is awarded to a group of companies, the commitment refers to the operator, responsible for the group and the conduct of petroleum operations.

CHAPTER III EVALUATION OF PROPOSALS

Article 8 Evaluation Commission

1. The evaluation of the proposals put forward in the bidding round shall be carried out by an Evaluation Commission (the “Commission”). The Commission shall consist of an odd number of members, being a minimum of five (5) and a maximum of nine (9).
2. The members of the Commission shall be nominated by the Minister for Natural Resources, Minerals and Energy Policy and shall include the Director of Oil, Gas and Energy as a member of the Commission.
3. Other members of the Commission may be drawn from the senior members of any one of the Ministries responsible for the petroleum sector, finance, economics, environment and justice, and international experts of recognised experience and qualification in the petroleum industry.
4. The Commission shall make decisions by majority in plenary sessions. The quorum for this plenary session is two thirds of the members. This is without prejudice to the constitution, prior to the process of evaluation of the proposals, of working groups with competence to evaluate specific aspects of the proposals, for purposes of preparation of the decision-making in plenary.
5. In the absence of a specific set of rules, the rules of procedure for the Commission shall be approved by the Commission prior to the commencement of the Commission’s evaluation of the proposals, in which case the rules of procedure shall be published together with the Evaluation Report.

6. The date for the commencement of the work of the Commission is established in the tender protocol.

Article 9 **Evaluation of proposals**

1. The proposals shall be evaluated according to objective criteria, established and defined in the tender protocol taking into account the purpose of the bidding round, and in the strict observance of the principles of legality, justice and fairness, impartiality, public interest, good faith, equality among the applicants and proportionality.
2. The evaluation process aims to identify the proposal that offers the best conditions and advantages for the State.
3. Without prejudice to other criteria to be established and defined in the tender protocol, the evaluation of the proposals shall take into account the proposals on work programmes and budgets, and the content of local goods and services, training of Timorese, technology transfer and projects of infrastructural development in the petroleum sector in Timor-Leste.
4. Where two or more proposals are equal, the Commission may make its decision according to the available information on the performance and record of the applicants in relation to such matters including (but not limited to) efficiency, responsibility and competence in petroleum operations, health, safety, protection and environmental preservation, good corporate citizenship and responsibility, and greater technological capacity for exploration and exploitation specific to the contract area in question.
5. Where there is a tie, or if the Commission does not hold relevant or sufficient information to untie the proposals, the Commission shall establish specific proceedings, based on the principles referred to in paragraph 1 of this article, to decide between the two or more proposals that are tied at the end of the first evaluation.

Article 10 **Commission's Report**

1. At the completion of the evaluation proceedings, the Commission shall provide an Evaluation Report ("Report") for each contract area open for bidding. The Report shall include, but is not limited to, the following:
 - a) a recommendation on the classification of the proposals;
 - b) the reasons for the presented recommendation;
 - c) a summary explanation of the proceedings adopted in the evaluation; and
 - d) any other information that the Commission considers relevant for purposes of the homologation of the results of the bidding.

2. The tender protocol shall set a date for the presentation of the Report or Reports.

Article 11 Homologation of the Report

1. The Report shall be given to the Minister for Natural Resources, Minerals and Energy Policy for homologation within three (3) working days commencing from the date established under paragraph 2 of the previous article.
2. Without prejudice to article 13, the homologation shall take place within ten (10) working days commencing on receipt of the Report.
3. Refusal of homologation by the Minister for Natural Resources, Minerals and Energy Policy may only take place after a hearing of the Commission, and through decision reasoned and based on the violation of the principles referred to in paragraph 1 of article 9.
4. The refusal of homologation entails the return of the Report to the Commission for purposes of re-analysis taking into account the reasons for the refusal. The Commission shall provide a new Report to the Minister for Natural Resources, Minerals and Energy Policy within three (3) days commencing from the date in which it took notice of the reasons for the refusal.

Article 12 Notification and Publication

1. The parties shall be notified of the results of the evaluation of proposals within three (3) working days commencing from the date of the homologation of the Report.
2. The homologation decision, a summary of the proposals evaluation results, and a significant summary of the Report shall be published in the *Jornal da República*, as well as through public media considered adequate by the Minister for Natural Resources, Minerals and Energy Policy, within ten (10) working days commencing from the date of homologation.

Article 13 Complaints

1. The applicants to a given contract area have the right to file a complaint, before the Minister for Natural Resources, Minerals and Energy Policy against the homologation decision concerning the contract area in question. This right of complaint must be exercised within ten (10) working days commencing from the date of publication referred to in paragraph 2 of the previous article.
2. The complaint must be produced in writing, indicating the remedy sought and the reasons for the complaint.

3. The other applicants to the same contract area shall be notified of the contents of the complaint, so that, if they so decide, they may express their views on the complaint within five (5) working days commencing from the date of notification.
4. The decision regarding the complaint shall be made within the period of ten (10) working days commencing from the date of expiry for the time frame referred to in paragraph 3 of this article, be reasoned and address all complaints presented and the allegations presented by other applicants.
5. The decision referred to in the preceding paragraph, and its reasoning, shall be published in the *Jornal da República*, as well as through the public media considered adequate by the Minister for Natural Resources, Minerals and Energy Policy within fifteen (15) working days commencing from the date in which the decision is handed down.
6. Judicial review shall be governed by the laws of Timor-Leste.

CHAPTER IV FINAL DISPOSITIONS

Article 14 Entry into Force

The present regulation shall enter into force on the day after its publication.

Approved by the Council of Ministers, 24 August 2005.

The Prime Minister

(Mari Bim Amude Alkatiri)

Minister for Natural Resources, Minerals and Energy Policy

(Mari Bim Amude Alkatiri)

Promulgated, 5 October 2005.

To be published.

President of Timor-Leste

(Kay Rala Xanana Gusmão)

Annex 1
PRODUCTION SHARING CONTRACT:
Compulsory Terms and Conditions

The following terms and conditions form part of compulsory terms and are without material alteration, to any Production Sharing Contract included as an annex to the Tender Protocol for a bidding round covered in the present regulation:

1. If the Contractor is more than one company, the companies must prepare and sign a joint operating agreement governing their operations under the Production Sharing Contract. The Production Sharing Contract includes the necessary provisions to provide for the State's right of participation as defined below, namely those concerned with the principals found in the joint operating agreement, which are stipulated in an annex to the Production Sharing Contract.
2. The obligations and liabilities of each Contractor under a Production Sharing Contract except the State-Owned Contractor are the obligations and liabilities of them all except the State-Owned Contractor, jointly and severally.
3. Contractors will be given the exclusive right to carry out Petroleum Operations at their sole cost, risk and expense; and share in petroleum produced from the contract area.
4. A maximum exploration term of seven (7) years with provisions for periodic relinquishments of parts of the contract area at the end of the third (3rd) and fifth (5th) years of exploration.
5. Right of the State at the time of declaration of commercial discovery to participate in the development and production with equity interest of up to twenty (20) percent.
6. A term of twenty-five (25) years for development and production of commercial discoveries.
7. Annual work plans and budgets for exploration, development and production activities to be approved by the Minister for Natural Resources, Minerals and Energy Policy.
8. Allowances for and obligations to properly decommission and abandon petroleum facilities, and the obligations of the contractor on this subject matter.
9. Obligations to provide for health, safety and environment by those persons involved in petroleum operations, to those who are affected.
10. Obligations relating to training, education, and capacity building of Timorese nationals in the petroleum sector, the employment of Timorese nationals and the acquisition of goods and services in Timor-Leste.
11. A five (5) percent Royalty on gross revenues of petroleum produced for the State.

12. Contractor cost recovery of allowed qualifying expenditures.
13. An annual Uplift for the Contractor in relation to unrecovered expenditures.
14. A split in petroleum between the Contractor and the State, after full cost recovery by the Contractor, forty (40) percent to the State, and sixty (60) percent to the Contractor.
15. A domestic market obligation if so declared by the State.
16. Confirmation that all data are to be owned by the State and that the State is to be provided copies of everything.
17. Third party access to facilities in contract areas.