



MINFIN



INSTITUTO DE GESTÃO DE ACTIVOS E PARTICIPAÇÕES DO ESTADO

Republic of Angola

**TENDER SPECIFICATIONS
PUBLIC TENDER N° 03/2019
Disposal of Industrial Plants**

February 2019

Tender Specifications

Bid Process N° 03/2019

**INSTITUTE FOR THE MANAGEMENT OF STATE ASSETS AND
SHAREHOLDINGS**

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TITLE I

LEGAL CLAUSES

CHAPTER I

GENERAL PROVISIONS

Clause 1 - Definitions

- 1- In the documents of the Procedure and the Allotment, the following words and expressions have the meaning that in this paragraph is attributed to them. Except when the context imposes a different reasoning, it shall mean as follows:
 - a) «*Responsible Body*», means the body responsible for conducting the Public Act, which is the Institute for the Management of State Assets and Shareholdings;
 - b) «*Adjudicating Entity*», means the entity responsible for divesting the Industrial Plant, which is the Ministry of Finance;
 - c) «*Successful Bidder*», means the Company or Individual to whom the Body Responsible for Conducting the Public Act adjudicates the winning bid for the purchase of the Industrial Plant;
 - d) «*Contract/Agreement*», means the agreement signed between the Adjudicating Entity and the Allottee, where they stipulate the conditions and obligations between both Parties in respect of the disposal of the Industrial Plants within the Luanda-Bengo Special Economic Zone.

Clause 2 – Scope of the Disposal

- 1- This Tenders document comprises the clauses to be included in the Contracts to be concluded, following the Public Tender, with a view to the Autonomous Disposal, of 7 (seven) industrial plants, duly individualized by lots in a numerical sequence, and located in the Luanda-Bengo Special Economic Zone (SEZ), namely;
 - a) Lot 1 - **UNIVITRO** – Glass Manufacturing Industry;
 - b) Lot 2 - **JUNTEX** – Mortar Products Industry;
 - c) Lot 3 - **CARTON** – Packaging Industry;

- d) Lot 4 - **ABSOR** – Absorbents Manufacturing Industry;
 - e) Lot 5 - **INDUGIDET** – Hygiene and Detergent Products Industry;
 - f) Lot 6 - **COBERLEN** – Blankets Manufacturing Industry; and,
 - g) Lot 7 - **SACIANGO** – Cement Packaging Industry, as well as assets, machinery and equipment, and concession of the land use title deed.
- 2- Each industrial unit will be sold separately and independently, with each allotment corresponding to the signing of a specific individual contract.
 - 3- The disposal of the Plant being object of the Contract shall be carried out under the system of total disposal, whereby it shall be added to each Industrial Plant the respective assets integrated in its core objective, including the land use title deeds to the location where the industrial plants are installed.
 - 4- The Industrial Plants, with their respective lands and appurtenances, shall be disposed of exclusive of all existing liabilities, and free of any and all encumbrances or charges.

Clause 3 – Alienation Set-up

- 1- The establishment of the Alienation Set-up shall include movable and immovable assets related to the objective of the Contract, as well as all rights and obligations aimed at the realization of the public interest, the underlying factor behind the conclusion of the Contract.
- 2- For the purposes of the achieving the contents of the previous paragraph, all existing assets as at the date of the signing of the contract, as well as those that are indispensable for the development of the activities under consideration, shall be deemed to be included in the disposal.
- 3- The “List of Assets” included in the inventory in Annex 1 of these Tender Specifications shall be deemed to be part of the disposal.

Clause 4 - Physical Delimitations of Disposal

The Industrial Plants are endowed with the Technical and Material characteristics included in the technical data sheets attached to the Tender Offer Program.

Clause 5 – Nature of Risk

The Allottee assumes full and exclusive responsibility for the risks inherent to the disposal process.

Clause 6 - Disposal Agreement

- 1- The underlying Agreement to this process is made up of, or composed of, the respective contractual clauses with its annexes, and is generally concluded in writing.
- 2- They also include the following elements:
 - a) Clarifications and corrections to the Tender Specifications, as provided by the Body Responsible for Conducting the Public Act;
 - b) Tender Specifications;
 - c) The winning bid, and,
 - d) Highlights on the winning bid provided by the Allottee, and accepted by the Body Responsible for Conducting the Public Act.
- 3- In case of divergence between the contents of the documents referred to in paragraph 2 of this clause and the clauses of the Agreement, the former shall prevail, unless the proposed adjustments have been accepted by the Allottee.

CHAPTER II OBLIGATIONS OF THE PARTIES

Clause 7 - Obligations of the Adjudicating Entity

- 1- For the purposes of disposal, objective of the Contract, the Adjudicating Entity is subject to the following obligations:

- a) To transfer, during the handover act of the Industrial Plant, all the rights over the commercial concern, including all documentation related to legalization and mandatory licenses for the exercise of the industrial activity, as well as all documentation and information related to the nature of the contract;
- b) To be readily available to provide clarifications related to the operational activity of the Industrial Plant for at least one month, after the Allottee would have started operations.

Clause 8 - Obligations of the Allottee

- 1- Without prejudice to other obligations provided for in the applicable legislation, in this Tender Specification or in the contractual clauses, the Allottee shall perform the obligations as defined in the parts of the present procedure.
- 2- The following obligations shall also apply to the Allottee:
 - a) To pay for any taxes, duties, emoluments of any kind or any other charges as required by the competent authorities, relating to the performance of the Contract;
 - b) To promote the development and functioning of the industrial nit, in accordance with the current legislation, and the rules of the Special Economic Zone Luanda-Bengo

TITLE II FINANCIAL AND TECHNICAL GUARANTEES

Clause 9 – Irrevocable Guarantee Deposit

- 1- To ensure the exact and timely fulfillment of obligations, the Allottee shall provide a guarantee of 5% of the initial value of the bid;
- 2- The guarantee deposit may be provided by means of a bank guarantee, or insurance bond according to the choice of the Contractor, and acceptable to the Body Responsible for Conducting the Public Act, in the following instances:

- a) If the Allottee should provide a bank guarantee, it shall equally present a comfort letter by which a legally authorized Angolan or Foreign banking entity assures, up to the limit of the deposit amount, the immediate payment of any sums required by the Ministry of Finance, due to non-compliance of the obligations to which the guarantee relates, irrespective of any judicial decision;
 - b) When the guarantee is provided by means of an insurance bond, a Policy shall be presented by which an Angolan or Foreign entity legally authorized to carry out this insurance shall assume, up to the limit of the amount of the guarantee, the cost of immediately satisfying any monetary values required by the Body Responsible for Conducting the Public Act, due to the non-fulfillment of the obligation to maintain the proposal to which the insurance coverage relates.
 - c) All expenses arising from the provision of the irrevocable guarantee deposit are the responsibility of the Allottee.
- 3- In addition to the situations provided for in the previous number, the irrevocable guarantee deposit may be provided through the issuance of a certified check in favor of the Adjudicating Entity in the amount of 2% of the offer.
- 4- The Ministry of Finance may revert in its favor the guarantee deposit provided, regardless of judicial decision, in cases of non-compliance with legal, pre-contractual or contractual obligations by the Successful Bidder/Allottee.

Clause 10 - Financial Contribution

For the disposal of the adjudicated Industrial Plant subject to this procedure, as well as for the fulfillment of the other obligations contained in this Tender Specifications, the Successful Bidder/Allottee shall pay a financial contribution corresponding to the value of the bid amount.

Clause 11 - Payment Plan

The payment of the amount referred to in the previous number shall be made as follows:

- a) The amount of 5% or 2% corresponding to the value of the deposit guarantee, shall be executed on the date of the bid, through the comfort letter or the certified check issued by the bank, as described in clause 9;
- b) Release of the outstanding 95% or 98% up to 30 (thirty) days after conclusion of the Sales Agreement.

Clause 12 - Modes of Payment

- 1- The payment of the amount mentioned in clause 10 may be done by means of a bank deposit in the Single Treasury Account (STA), requesting for the corresponding proof through the issuance of the Invoice Document (DC) - Emoluments and Miscellaneous Taxes and/or in Angolan Government Securities.
- 2- If the deposit is made in National Treasury Bonds, they will be valued at their nominal value, unless in the last three months the average stock price is below par, in which case the valuation is made at 90% of this average for securities with a residual maturity of less than or equal to one year and 80% of that average for securities with a residual maturity of more than one year.

TITLE III CONFIDENTIALITY AND RESOLUTION

CHAPTER I CONFIDENTIALITY

Clause 13 - Confidentiality

The Parties undertake, during the tender process and during the term of the divestiture contract, to maintain complete confidentiality and not to take advantage, directly or indirectly, of the knowledge and information to which it has had access within the scope of these tender specifications or the related activity.

Clause 14 - Resolution by the Adjudicating Entity

Notwithstanding the other grounds for termination provided for in Law, the Adjudicating Entity may terminate the Contract as sanction if the Allottee seriously or repeatedly fails to comply with any of its obligations, in particular if there is a total or partial non-compliance of the Contract terms by the Allottee.

Clause 15 - Resolution by the Allottee

- 1- Notwithstanding the other grounds for termination provided for in Law, the Allottee may terminate the Contract if there is a total or partial non-fulfillment of the obligations assumed by the Adjudicating Entity within the Contract, which jeopardizes its continuity.
- 2- In the instances provided for in paragraph 1 of this clause, the right of termination may be exercised by means of a declaration sent to the Adjudicating Entity, which shall take effect Fifteen (15) days after receipt of the declaration, unless the Adjudicating Entity fulfills the obligations in arrears within that period, plus interest for late payment, should such be the case.
- 3- Notwithstanding the provisions of the preceding paragraphs, the right of rescission shall be possible only where the termination does not cause serious prejudice to the safeguarding of the public interest underlying the contractual relationship or, if such loss is involved, when the maintenance of the Contract clearly puts the

economic and financial viability of the Allottee in question, or if it proves to be excessively burdensome, in which case the relative public and private interests must be duly considered.

- 4- The termination of the Contract under the terms of the previous numbers does not determine the repetition of the services already performed by the Allottee.

CHAPTER II

FORMS OF DISPUTE SETTLEMENT

Clause 16 - Extrajudicial Settlement

- 1- The Parties declare that they are in good faith and that they will make every effort and use all the means at their disposal to ensure the pursuit of the objectives set forth in the Contract, always favoring the resolution of any differences, doubts or omissions, through the collaborative and conciliatory approach.
- 2- The Parties shall regulate their relationship in all matters relating to the Contract and its objectives, on the principles of equity and good faith, and shall always seek to reconcile their particular interests within the spirit of mutual collaboration and amicable understanding.
- 3- In the event of a dispute or litigation concerning matters relating to the interpretation, implementation or integration of the Contract, or having to do with its validity and effectiveness, or relative to any of its Clauses, the Parties undertake, first and foremost, to reach a conciliatory agreement, within 30 (thirty) calendar days from the date of notification, to be undertaken by either Party, for the beginning of the process at achieving a conciliatory agreement.
- 4- In the event that the dispute is not resolved under the terms of the preceding paragraph, either Party may submit the matter to the jurisdiction of the competent courts, pursuant to the provisions of the subsequent Clause.

Clause 17 - Competent Jurisdiction

The Civil and Administrative Chamber of the Supreme Court shall have jurisdiction over all matters of conflict arising out of the Contract.

TITLE IV FINAL PROVISIONS

Clause 18 - Other Charges

All costs arising from the provision of collateral/guarantees, payment of licenses, fees and taxes are the responsibility of the Allottee.

Clause 19 - Modifications

- 1- Modifications to the Contract may be initiated by both the Adjudicating Entity and/or the Allottee at any time prior to the date of receipt of the goods and/or equipments.
- 2- In case the Adjudicating Entity or the Allottee intend to make any changes, they will have to do so by means of a written agreement, in accordance with existing legislation.

Clause 20 - Change in Circumstances

- 1- The publication of new laws or regulations, as well as the approval of any administrative measures that violate the rights, intensify the obligations or diminish the legal or contractual guarantees of the Parties that may cause harm or affect the economic and financial balance of the Contract and/or the conditions which led to its celebration, shall be considered for the purposes of the Civil Code as an alteration of the circumstances that led the Parties to enter into the Agreement.
- 2- In the event of the occurrence of any of the circumstances referred to in the preceding paragraph, the Parties shall, by agreement, revise the Agreement in order to restore its balance based on the safeguarding of the interests of both.

Clause 21 - Communications and Notifications

- 1- Any communication or notification between the Parties shall be made by registered letter or certified mail, and in the case of electronic mail, with acknowledgment of receipt.
- 2- Any communication or notification made shall be deemed to have been received on the date in which the acknowledgment of receipt is signed.
- 3- Any change in the contact information of either Party, including the change of legal representative and registered office, should immediately be communicated to the other Party, pursuant to provisions contained in paragraph 1 of this clause.

Clause 22 - Counting of Deadlines

The periods provided for in the Agreement shall be in working days, and shall be suspended on Saturdays, Sundays and Public Holidays.

Clause 23 - Applicable Legislation

- 1- The Agreement is governed by the clauses contained in the Contract, this Tender Specification, as well as by Angolan Law, namely, the Public Contracts Law.
- 2- The Allottee shall comply, in all its mandatory and other provisions, with the Terms of the Contract, in this Tender Specification and in the legal document referred to in the previous number, and shall also be obliged to comply with all the other legal dispositions in force in the Republic of Angola and which relate to the Contract.

Clause 24 - Date of Entry into Force

- 1- The Contract shall be deemed to be in effect when the following steps would have been fulfilled:
 - a) Signing of the Contract by the Parties;
 - b) Presentation by the Allottee of proof of payment of the bid amount;
 - c) Receipt by the Adjudicating Entity of payment of the amount of the winning bid;

d) Confirmation of the Contract by the Heads of the relevant Ministerial Departments, in accordance with Executive Decree no. 77/18 of 4 July and provision N°. 2 of Article 12 of Law N° 8/03, of April 18, having to do with the Altering of the Privatization Law, if applicable.

The date of fulfillment of the last obligation is that of the entry into force of the Contract, being that the Parties shall confirm the date of entry into force of the contract in writing.