

DECREE-LAW No. 11/2013

of August 7

The PDID Legal procurement regime

Considering the approval of Decree-Law no. 4/2012, of February 15, on Integrated District Development Planning (PDID), with the objective of establishing an integrated system of planning and implementation of infrastructure projects at local level and ensure State investment in areas that Districts, Sub-Districts, and Sucos define as priority

Having already regulated the planning process for the preparation of the District Investment Plan, it is now up to the Government to approve the legal procurement regime of the PDID for the execution of public works projects in the districts.

The PDID's legal procurement regime aims to ensure the sound management of the State financial resources through the use of simple, transparent and competitive methods of awarding public works contracts allowing to encourage economic development, business competition and training of public servants at the local level.

Procurement is usually carried out using the district public tender modality, limited by an initial prequalification process. Exceptionally, contracts for the construction of public works may be awarded in the form of direct contracting.

Accordingly, pursuant to Article 115 (1) (e) of the Constitution of the Republic, the Government enacts the following into law:

SECTION I

General provisions

Article 1

Object

1. The present law establishes the legal procurement regime for the award of public works in the amount of up to US \$ 500,000 to be implemented in the Districts under the terms of the Integrated District Development Planning (PDID).
2. Public works projects in the amount of up to US \$ 75,000.00 that the local community identifies as having the capacity to implement under the National Suco Development Plan (PNDS) are subject to a special procurement process to be regulated by a specific law.

Article 2

Public works projects

1. For the purposes of this Decree-Law, public works projects are projects consisting of civil construction, real estate, its construction, maintenance or repair works, or any other professional activity in civil engineering, installation, decoration, finishing and others of a similar nature that may include the project of the works and or the provision of some material resources required by the characteristics of the service to be provided.

2. Expenditures included in the PDID public works projects which cover the execution of works, purchase of goods or provision of services are subject to this legal regime, provided that the characteristics and the purpose of the project justify it and the execution component of the public works reveals greater financial significance.

Article 3

Principles of local development

1. The PDID procurement is aimed at satisfying the needs identified by the community and strengthening the local economy.
2. Public works projects identified and prioritized by Sucos, Sub-districts and Districts are awarded under the legal procurement regime of the PDID, in accordance with the process for preparation of the District Investment Plan.
3. District Development Commissions are the local level entities responsible for conducting the PDID procurement process.
4. National civil construction companies with headquarters in the District where the project is to be implemented are contracted for the execution of the public works.

Article 4

Principles of legality, transparency and accountability

1. The PDID procurement process shall be carried out in accordance with the rules and procedures laid down in this Decree-Law and in the General Procurement System, providing for the use of competitive, simple and transparent methods for the award of public works contracts.
2. All official documents of the PDID procurement process are public and should be made available to interested bidders for purposes of complaint or appeal.
3. The stakeholders in the PDID procurement are civilly, financially and disciplinarily responsible for conducts that violate the provisions of this law, without prejudice to any criminal responsibility.

Article 5

Procurement modalities

1. The procurement process for the award of public works contracts is carried out in the form of public tenders delimited by an initial prequalification process at the district level.
2. Exceptionally, public works contracts may be awarded in the form of direct contracts, in the following circumstances:
 - (a) Cases of urgency following an unforeseen event which endangers public health and safety;
 - (b) Where for technical reasons there is only one company with appropriate conditions and qualifications for the construction of the work;

(c) Where no tenders are submitted, or if all tenders submitted do not meet the criteria laid down in the invitation to bid, or if candidates fail to comply with the requisites for participation and the deadlines required by the district open bid cannot be fulfilled in the event of a repeat of the tender, provided that the circumstances invoked are under no circumstances the responsibility of the CDD;

d) In the case of the award of a specific research, experience, study or original creation contract.

Article 6

Procurement phases

1. The PDID procurement process consists of 7 phases:

- a) District pre-qualification;
- b) Planning of district procurement;
- c) Preparation of the tender documents;
- d) District open tender;
- e) Conclusion of the contract;
- f) Supervision of contract execution;
- g) Delivery of the works and payment.

2. The phases of the procurement process are regulated by Ministerial Diploma of the Ministry of State Administration.

SECTION II

Competent Entities in the PDID Procurement

Article 7

Competences of the Ministry of State Administration

The Ministry of State Administration is responsible for verifying the legality of the PDID procurement process and for providing technical, logistical and financial assistance to the local bodies of the PDID, with the following competencies to support:

- (a) The District Development Commission (CDD) in the preparation of the district procurement plan and tender documents;
- b) The PDID Procurement Committee in carrying out the prequalification process and district open tender;
- c) The Verification, Evaluation and Supervision Teams (EVAS) in supervising the execution of public works projects in the districts.

Article 8

Competencies of the National Development Agency

The National Development Agency (ADN), in coordination with the Ministry of State Administration and the Ministry of Finance, is responsible for the following:

- a) Monitoring the prequalification process and the district open tender;
- b) Confirming the availability of financial funds and authorizing payments to contractors;
- c) Monitoring the execution and supervision of public works contracts.

Article 9

Competence of PDID bodies

1. The CDD is the PDID body responsible for preparing the District Procurement Plan and public tender documents.
2. The District Administrator, as Coordinator of the CDD, is responsible for approving the District Procurement Plan and the public tender documents, as well as for the conclusion of the public works contracts, in representation of the ADN.
3. The Directors of the territorial delegations of each Ministry in the District, as heads of EVAS, are responsible for supervising the execution of the civil construction works in their sector.

Article 10

District Procurement Committee

1. The District Procurement Committee (DAC) is a sub-unit of the CDD responsible for conducting the prequalification process and the district public tender.
2. The DAC is headed by the District Secretary and composed of at least two members elected by CDD, with technical knowledge in the area of civil engineering.
3. The ADN representative at the district level participates in the DAC as an observer without the right to vote.
4. The organization and internal functioning of the DAC is regulated by Ministerial Diploma of the Ministry of State Administration.

Article 11

Confidentiality

1. All participants called on to collaborate in the PDID procurement process are required to maintain secrecy and ensure the confidentiality of the elements of the process.
2. Members of District Development Commissions as well as civil servants or technical advisers assisting the Commission shall be subject to civil, criminal or disciplinary liability under the law if they breach the confidentiality requirement.

Article 12

Impediments

1. The impediments apply to tendering companies whose representative or owners are:
 - a) The District Administrator, as Coordinator of the CDD;
 - b) Members of the DAC responsible for the procurement process in the District;
 - c) Officials or agents of the public administration, members of ADN staff, of the relevant Ministries in the implementation of the project or the District's Administration responsible for the procurement process;
 - d) Consultants or technical advisors who participate in the process of preparing technical specifications and drawings for carrying out public works in the District responsible for the procurement process;
 - e) Relatives close to the persons identified in subparagraphs a) and b).
2. For the purposes of the preceding number, spouses, parents and grandparents, children and grandchildren, and siblings shall be considered close relatives.

SECTION III

Pre-Qualification

Article 13

Purpose of pre-qualification

1. The prequalification process evaluates and qualifies competing companies to participate in the district public tender for the award of public works in the district where the company has its registered office.
2. In the prequalification process, the companies are qualified in the following categories:
 - a) Category A: for the execution of projects in the amount of up to 150,000.00 US Dollars;
 - b) Category B: for the execution of projects in the amount between \$150,001.00 USD and \$500,000.00 USD.
3. Prequalified companies must maintain the fulfillment of the prequalification requirements, and provide the information proving compliance, whenever requested by the CAD.

Article 14

Prequalification requirements

1. Companies that demonstrate possessing the requirements below are admitted in the prequalification process:
 - a) Legal capacity to conclude construction contracts;
 - b) Professional competence;
 - c) Technical capacity;

- d) Commercial feasibility and financial resources for contract performance;
- e) Ability to promote local development.

2. The requirement identified in sub-paragraph e) of the preceding paragraph is only required for companies wishing to compete in the award of civil construction and public works projects, valued in excess of \$150,001.00 USD.

Article 15

Documents proving qualification

1. The verification of the qualifications and competences of bidding companies shall be established through the presentation and analysis the following documents:

- a) Certificate of the company's business register or its certified copy, with updated registrations and a copy of the respective corporate by-laws;
- b) Certification of the Ministry of Public Works, in accordance with the system of certification and registration of civil construction and civil technical consultancy companies;
- c) Proof of compliance with tax obligations for the last year;
- d) Bank statement of the company account for the last 3 months;
- e) Listing and evaluation, where applicable, of public works previously carried out with the Government, as well as other civil construction works contracted by individuals;
- f) "Curriculum Vitae" of the technical personnel responsible for the civil construction works to be carried out in the districts;
- g) Certificate of criminal record of the company's legal representative issued in the last six months by the competent authorities;
- h) The company's plan to use local resources, namely products and services purchased from local suppliers;
- i) Plan for the creation of local jobs, vocational training and knowledge transfer.

2. The documents identified in subparagraphs h) and i) of the previous number are required only from those companies wishing to bid for the award of public works valued in excess of \$150,001.00 USD.

3. In substitution for the certificate of the Ministry of Public Works identified in paragraph 1 (b), bidding companies may submit the following documents:

- a) Listing of the equipment and of the technical personnel that the company possesses;
- b) Copies of employment contracts and certificates of academic and professional qualifications of the technical personnel responsible for the construction works;
- c) Copies of equipment rental contracts, when this is the modality used by the company.

4. The process of analyzing and evaluating the documents referred to in the previous numbers is regulated by Ministerial Diploma of the Ministry of State Administration.

Article 16

Causes for disqualification and impediment

1. Competitors shall be disqualified from and excluded from the prequalification procedure where:

- a) They have not presented all the documents required under the terms of the previous Article;
- b) They have submitted more than one prequalification proposal;
- c) They have tax debts or debts of any other nature to the State;
- d) They are in a situation of insolvency, declaration of bankruptcy or in the process of cessation of activity, bankruptcy or in liquidation;
- e) They have business activities suspended by judicial decision;
- f) They are being administered by a court or judicial officer;
- g) Directors or administrators of the company have been convicted by judicial decision of a criminal offense, for criminal offense related to professional conduct or to providing false statements or misinformation regarding their qualifications, for the conclusion of a contract with any public institution of the State, in the previous five years;
- h) The companies have been disqualified for the conclusion of a contract with any public institution of the State as a result of administrative suspensions applied in other procurement processes;
- i) The representatives or owners of the company are in a situation of impediment under the terms of Article 12.

2. The DAC shall disqualify a bidding company if it finds, at any phase of the procurement process, that the information provided in relation to its qualifications is proven to be false.

SECTION IV

Procurement plan and district open tender documents

Article 17

District Procurement Plan

At the beginning of each fiscal year, following the announcement of the State Budget, CDD prepares a District Procurement Plan with detailed information on the district public tenders to be held for the contracting of construction works in the District.

Article 18

Tender Documents

1. The documents of the district public tender shall be prepared by the CDD and shall contain at least the following information:

- a) Instructions for preparation and submission of tenders;
 - b) Forms to be completed by tendering companies for the submission of the bids;
 - c) Technical Drawings;
 - (d) Technical specifications;
 - e) Estimated value of the civil construction works to be executed;
 - f) Form and conditions of the contract.
2. The CDD Coordinator approves the District Procurement Plan and the Bid Documents after verification of their legality by the technicians of the Ministry of State Administration.

SECTION V

Open District Tenders

Article 19

Phases of the open tender

1. The open district tender process is carried out through the following phases:
- a) Invitation to tender;
 - b) Prior conference;
 - c) Submission of tenders;
 - d) Opening of tenders;
 - (e) Admission and exclusion of tenderers;
 - (f) Contract Award decision;
 - g) Deadline for complaints;
 - h) Conclusion of the contract.
2. The phases of the district public tender are regulated by Ministerial Diploma of the Ministry of State Administration.

Article 20

Simultaneous public tender

1. Each CDD shall, whenever possible, plan to carry out the various phases of the district public tender in simultaneous with for the awarding of various public works contracts.
2. Under the simultaneous public tender rule, the phases of the district public tender must be carried out through:
- a) Publication of a single invitation to bid for the district public tender applicable to all contracts;
 - b) Holding a single prior conference to clarify all contracts;

- c) Indication of a single deadline for submission of tenders for all contracts;
 - d) Holding a single opening session of tenders for all contracts.
3. The evaluation phase of the tenders submitted for each contract must subsequently be conducted separately for each project.

Article 21

Invitation to District Public Tender

The companies prequalified to bid in the district public tender processes are invited by public announcement to submit their bids for the execution of civil works of value up to 150,000.00 USD or between \$150,001.00 and \$500,000.00 USD.

Article 22

Limit to the award of projects

In the district public tenders, companies can be selected for the execution of public works projects, provided that the sum of the total value of the projects to be executed does not exceed the following limits:

- a) \$250,000.00 USD for category A companies;
- b) \$500,000.00 USD for category B companies.

Article 23

Selection of competing companies

1. The evaluation process of the tenders is carried out individually for each project, starting with the evaluation of the proposals for the highest value project and concluding with the evaluation of the proposals for the lowest value project in the list of projects put to tender.
2. Proposals shall be disqualified when:
 - (a) The tender has submitted several bids for the same project;
 - (b) The proposals are manifestly incomplete or reveal inadequate information for execution of the project;
 - (c) There are any situation of impediment for the company;
 - (d) There are ongoing judicial or administrative disputes in which the bidder is involved and whose conflict may prevent the project from being carried out.
3. The CAD evaluates the proposals of the admitted bidders and selects the proposal that presents the lowest value for the execution of each project.
4. If, in the proposal evaluation process, the proposal identified as having the lowest value corresponds to the company already selected for the execution of other projects, and the company has already reached the limits identified in the previous Article, the CAD selects the next proposal of lower value.

Article 24

Abnormally low or high value bids

1. The DAC may not reject bids on the basis of abnormally low or high amounts without first requesting in writing to the tenderer to provide clarification on the constituting elements of the proposal which are deemed relevant and which shall be examined in the light of the explanations received.
2. It is considered as abnormally low the value of tenders which is cumulatively:
 - a) More than 10% below the estimated cost for the project, and;
 - (b) More than 5% below the value of the next lowest bid submitted by a qualified bidder.
3. The value of the tender which is higher than the estimated cost for the project shall be deemed to be abnormally high.

Article 25

Verification of legality and award of the project

The CDD Coordinator confirms the decision of the CAD and announces the award of the projects to the selected companies after verification of the legality of the district public tender process by the technicians of the Ministry of State Administration.

SECTION VI

Complaint and appeal

Article 26

Complaints and hierarchical appeal

1. Competitors who consider themselves as having been affected during the prequalification or tendering process may lodge a complaint or a mandatory hierarchical appeal for the following reasons:
 - a) Failure to comply with the rules established in this diploma or in regulatory diplomas;
 - b) Non-compliance with a decision taken by the jury, which may have violated the legal rules in force.
2. In the case of paragraph a) of the preceding paragraph, the complaint or hierarchical appeal must be lodged within 5 days after the fact that gave rise to it.
3. In the case of paragraph 1 (b), the complaint or hierarchical appeal must be submitted within 5 days of the publication of the announcement concerning prequalification or the intention to award the contracts.
4. If there is a complaint, the deadline of the hierarchical appeal begins with the notification of the decision on the complaint.
5. The filing of a complaint or a hierarchical appeal shall not have suspensive effect on the procurement process.

Article 27

Competent authority to decide on complaints and hierarchical appeals

1. The District Administrator is competent to decide on complaints during the prequalification or district public tender process.
2. The Minister of State Administration is competent to decide the hierarchical appeal during the process of prequalification or district public tenders.

Article 28

Judicial appeal

1. The decision rendered in an hierarchical appeal may be appealed to the competent court, to be submitted within 15 days after the date of notification of the decision.
2. The filing of a judicial appeal shall not have suspensive effects in the procurement process.

SECTION VII

On public works contract

Article 29

Conclusion of the public works contracts

1. The District Administrator, in his capacity as CDD Coordinator and on behalf of the ADN, shall conclude the contract for the execution of public works of up to 500,000.00 USD.
2. The legitimate representative of the selected company shall be the legal representative identified in the company's bylaws, in accordance with the law on companies or the person acting on behalf of the company, with a duly authenticated power of attorney.

Article 30

Guarantee of contract execution

1. Bidding companies shall provide a declaration of commitment of guarantee as to the performance of the contract.
2. Companies and legal representatives of companies that fail to comply with the commitment referred to in the preceding paragraph are impeded from participating in future district public tenders, for a period of between three and five years, depending on the seriousness of the violation.

Article 31

Subcontracting

1. Companies contracted to execute PDID projects are prohibited from subcontracting the project to other companies.

2. Companies subcontracting other companies for the execution of public works projects awarded under the PDID shall not be allowed to participate in future district public tenders for three years.

SECTION VIII

Execution of the contract and payments

Article 32

Contract supervision

1. The Directors of the Territorial Delegations of each Ministry in the District, as heads of EVAS, shall monitor the execution of the projects in their sector and indicate the EVAS technicians responsible for the supervision of each public works project.
2. EVAS technicians responsible for supervising the works must regularly carry out on-site visits to each public works project, as well as confirm the information contained in the technical reports submitted by the companies.
3. The ADN may carry out inspections at the place of execution of the works and order supervision instructions of the execution to the EVAS technicians responsible for the supervision of works.
4. Reports of the EVAS technicians on site visits shall be submitted to CDD and ADN for monitoring, payment and receipt of the works.

Article 33

Execution errors

1. If the work is not being performed according to the technical elements of the project, the EVAS supervisor of the works must identify the deficiencies and notify the company, setting a deadline for the necessary repairs to be made.
2. The company shall be responsible for all deficiencies and errors relating to the execution of the works or the quality, form and size of the materials applied in cases where they differ from those approved in the contract.
3. The company shall bear the cost of the works, modifications and repairs necessary to adequately correct the identified deficiency or error.
4. The responsibility of the company ceases when errors and defects of execution have resulted from compliance with orders or written instructions transmitted by the supervisor of the works.

Article 34

Additional works due to unforeseen circumstances

1. Following an unforeseen circumstance, EVAS or ADN may decide that additional work is to be carried out where it is necessary and cannot be separated from the contract or even separable from the execution of the contract, and are strictly necessary for the conclusion the project according to its purpose.

2. Additional works are those whose type or quantity have not been foreseen or included in the contract, namely in the respective design and are intended to carry out the same project.

3. The contracted company is obliged to carry out the additional work as ordered unless the additional work is of a different kind than that provided for in the contract and the company demonstrates that it does not have the necessary equipment or manpower to carry it out.

4. Modifications to projects for additional works may not exceed the limit of 30% of the initial value of the project and the price of modifications may not be different from the prices provided in the initial contract for works of the same type to be executed under the same conditions.

Article 35

Contract payment

1. The total value of the project is set at the time of concluding the public works contract and its payment is made in periodic installments determined according to the amount of work executed.

2. Companies contracted to execute projects of value up to \$150,000.00 USD may request the payment of 35% of the contract value after the signing of the public works contract as an advance.

3. Companies contracted to execute projects valued between \$150,001.00 and \$500,000 USD may request payment of 20% of the contract value after the signing of the public works contract as an advance;

4. Payment of the remaining installments shall be made upon submission by the companies of progress reports on the execution and on the EVAS technicians' onsite visits.

5. The delay in receiving the contract advance payment installment is not considered as justification for non-compliance of the company in the installation at the work site, where this non-compliance is considered just cause for the resolution of the public works contract.

Article 36

Payment Entity

The payment of installments is authorized and processed by the ~~ADN~~ and transferred to the company's bank account identified in the contract.

Article 37

Quality assurance

ADN retains 10% of the contract value for a period of 3 months after the provisional acceptance of the works by CDD as quality assurance.

Article 38

Change of circumstances

Where the circumstances under which the parties founded the decision to contract are subject to abnormal and unforeseeable change, resulting in a serious increase in the costs of execution of works that does not fit into the normal risks, the contractor has the right to terminate the contract or review the contract, so as to be compensated for by the increase in the costs actually incurred or to update prices accordingly.

Article 39

Contract resolution

1. The contract may be resolved by the CDD Coordinator having occurred any of the following circumstances:

- a) Impossibility of the company to install itself in the work site and initiate the works;
- b) Delay in the construction or completion of works, without justification, for a period exceeding 60 days;
- c) Suspension of construction works that is unauthorized and without justification for a period exceeding 15 days;
- d) Inability of the company to correct defects identified in the work when they have been ordered;
- e) When documentary evidence is obtained revealing abusive behavior or corruption by the company awarded to obtain the contract or to execute the work;
- f) Other serious violations of the object of the contract.

2. Companies and their legal representatives who incur in any of the situations referred to in the preceding paragraph are prohibited from participating in future district public tenders, for a period of between three and five years, depending on the seriousness of the violation.

SECTION IX

Final provisions

Article 40

Regulations

The regulation of the various phases of the PDID procurement, as well as the transitional post-qualification procedure of the companies and their respective forms, are approved by Ministerial Diploma of the Minister of State Administration.

Article 41

Subsidiary regime

The general rules of the legal regime for State procurement shall apply with subsidiarity ~~subsidiarily~~ to the legal regime of the PDID procurement.

Article 42

Revocation

All rules contrary to the provisions of this law are revoked.

Article 43

Entry into force

This decree-law shall enter into force on September 1st, 2013.

Approved by the Council of Ministers on April 23, 2013.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of State Administration,

Jorge da Conceição Teme

Enacted on July 23, 2013

For Publication.

The President of the Republic,

Taur Matan Ruak