

DECREE-LAW No. 28/2014

of 24 September

Special Procurement Regime for the Oe-Cusse Ambeno Special Administrative Region

Law No. 3/2014, of June 18, approved the creation of the Special Administrative Region of Oe-Cusse Ambeno and established the Special Zone of Social Market Economy (ZEESM), which is part of the district of Oe-Cusse Ambeno and the Ataúro sub-district, based on a new model of administrative and financial organization, as a way of guaranteeing greater participation of the population and greater efficiency and quality of services provided to citizens, businesses, tourists and investors.

As part of the development of the Strategic Development Plan, ZEESM is a crucial tool for achieving the strategic objectives of industrialization, regional development and job creation. In this context, it is necessary to create a special supply regime that allows to speed up the process of public contracting, with the purpose of stimulating and promoting investment in these areas.

Thus, the Government decrees, pursuant to sub-paragraph e) of no. 1 of article 115, and a) and d) of article 116 of the Constitution of the Republic and article 30 of Law no. 3/2014, of June 18, to validate as law, the following:

Article 1

Subject matter and scope

The purpose of this decree-law is to lay down special rules for the execution of expenditures for the acquisition of goods and services or for the execution of construction works in the Special Administrative Region of Oe-Cusse Ambeno within the geographical scope defined in Article 3 of Law 3/2014 of 18 June.

Article 2

Competent contracting authority

1. The contracting authority competent to authorize procurement procedures and approve the award up to USD 5,000,000 is the President of the Authority of the Oe-Cusse Ambeno Region.
2. From USD 5,000,000 onwards, the contracting authority responsible for authorizing procurement procedures and approving the award is the Authority of the Special Administrative Region of Oe-Cusse Ambeno.
3. The President of the Authority of the Region of Oe-cusse Ambeno is always competent to sign public contracts after the award.
4. The competent contracting entity is technically supported by a sub-unit of its own within the National Procurement Commission, which supports procurement procedures authorized by the contracting authority on request.

Article 3

Procurement modalities

1. The procurement procedure for the ZEESM can be carried out through:
 - a) Restricted tender limited by an initial pre-qualification process at the international level;
 - b) Request for quotations.
2. The choice of one or another type of procedure must be duly substantiated.

Article 4

Pre-qualification

1. The pre-qualification procedure assesses and qualifies competing companies to participate in any procurement procedure to be carried out in the ZEESM.
2. Companies that demonstrate that they possess at least the following are admitted to the pre-qualification procedure:
 - a) Legal capacity to enter into contracts;
 - b) Professional competence;
 - c) Technical capacity;
 - d) Commercial viability and financial resources for the performance of contracts.
3. Pre-qualified companies must maintain the fulfillment of the pre-qualification requirements, and provide information proving compliance, whenever requested.

Article 5

Restricted tender

1. The competent contracting authority may call for a restricted call for tenders on the basis of an official list of contractors, service providers or suppliers approved by the pre-qualification procedure defined in the preceding article.
2. The competent contracting authority shall issue tender documents to all tenderers who have been invited to submit tenders under this article.
3. The tender documents shall specify the requirements applicable to tenderers, as well as the characteristics of the goods, works and services to be contracted, deadlines and criteria for evaluation of tenders and contractual terms to be in force.

Article 6

Request for quotations

1. The request for quotations may be used by the competent contracting authority in procurement procedures of less technical complexity.
2. Pursuant to the previous paragraph, the competent contracting entity must request tenders from at least three selected tenderers, based on the official list provided for in paragraph 1 of the previous article.
3. The competent contracting authority shall issue tender documents to all tenderers who have been invited to submit tenders under this article.
4. The tender documents shall specify the requirements applicable to tenderers, as well as the characteristics of the goods, works and services to be contracted, deadlines and criteria for evaluation of tenders and contractual terms to be in force.

Article 7

Advertising and archive requirements

1. The publication of pre-qualification notices and tender documents is subject to the following rules:
 - a) Pre-qualification notices shall be published in at least two national newspapers, in one of the official languages, as well as in English, in addition to other electronic or printed means of dissemination;
 - b) Tender documents must be available on the website of the competent contracting authority.
2. All documentation relating to procurement procedures shall be kept by the competent contracting authority for a period of five years from the date of their completion.

Article 8

Evaluation criteria for procurement procedures

1. The main objective of procurement procedures carried out under this diploma is to achieve the best quality-cost ratio for the competent contracting authority.
2. In order to determine which tender offers the best quality-cost ratio, the competent contracting authority must take account of the following considerations:
 - a) Technical considerations, i.e. the adequacy of the goods, works or services to the fulfillment of the functional and performance requirements identified in the tender documents, as well as the conditions of quality and maintenance;

- b) Business considerations, including the financial implementation capacity of the public contract entered into;
 - c) Local development considerations, by promoting the industrial and business capacity of the Democratic Republic of Timor-Leste, through the conclusion of consortium contracts or the subcontracting of domestic enterprises, where technically possible.
3. The evaluation mechanism may be numerical or based on minimum requirements as specified in the tender documents.

Article 9

Audits

The Chamber of Auditors establishes periodic audits to the competent contracting entity in order to check compliance with the present law, pursuant to paragraph 2 of article 42 of Law no. 3/2014, of June 18 and according to the legal regime in force regarding concomitant and successive supervision.

Article 10

Subsidiary regime

The general rules on procurement and public procurement apply in everything that does not contradict the provisions of this diploma.

Article 11

1st amendment of Decree-Law no. 14/2011, of 30 March

Articles 2 and 3 of Decree-Law no. 14/2011 of 30 March are replaced by the following:

"Article 2

Mission

- 1. (...).
- 2. The CNA is also responsible for supporting procurement processes in the Oe-Cusse Ambeno Special Administrative Region, regardless of their value, when requested.

Article 3

Tasks

(...):

- a) (...);
- b) (...);

- c) In particular, to support the completion of procurement procedures in the Oe-Cusse Ambeno Special Administrative Region when requested to do so;
- d) Collaborate with the National Development Agency, Secretariat of Major Projects, ministries and other public entities, in accordance with the law;
- e) Any other duties assigned to it by law. "

Article 12
Entry into force

This decree-law shall enter into force on the day following its publication.

Approved by the Council of Ministers on 8 July 2014.

The Prime Minister,

Kay Rala Xanana Gusmão

Promulgated on 09-19-2014

To be published.

The President of the Republic,

Taur Matan Ruak