



**REPUBLIC OF ALBANIA
COUNCIL OF MINISTERS**

**DECISION
No. 646 DATED 22.7.2015**

ON

**STIPULATION OF PROCEDURES AND CRITERIA
FOR THE SELECTION OF THE DEVELOPER IN THE
TECHNOLOGICAL AND ECONOMIC DEVELOPMENT AREA**

Pursuant to Article 100 of the Constitution and Article 4 of Law No. 9789, dated 19.7.2007 “On the establishment and operation of technological and economic development areas” as amended, upon the proposal of the Minister of Economic Development, Tourism, Trade and Entrepreneurship, the Council of Ministers

D E C I D E D:

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Scope and object**

This decision aims at the stipulation of procedures and criteria for the selection of the developer in the technological and economic development area, in conformity with the provisions of Law No. 9789 dated 19.7.2007 “On the establishment and operation of technological and economic development areas”, as amended.

**Article 2
Definitions**

In view of this decision, the following terms shall have these meanings:

1. “Law”, Law no. 9789, dated 19.7.2007 “On the establishment and operation of technological and economic development areas”, as amended.
2. “Area”, “technological and economic development Area”.

3. “Responsible Institution”, the ministry responsible for economy.

CHAPTER II PROCEDURES AND CRITERIA FOR THE SELECTION OF THE DEVELOPER

Article 3 Area Developers

1. An area developer may be a state institution or any domestic or foreign legal person.
2. The stipulation of the state institution in the role of the developer is made in the decision of the Council of Ministers for the announcement of the area.

Article 4 Procedures for the selection of the developer

Procedures for the selection of the developer are the following hereunder:

1. Competition procedure
2. Procedure upon application, in private property.

Article 5 Competition Procedure

1. The competition procedure starts with the publication of the contract notice by the responsible institution in the Public Notice Bulletin.
2. The responsible institution qualifies the candidates/bidders which meet the minimum requirements for qualification which have been published and then compares the bids among candidates/bidders by selecting the bidder evaluated with maximum points according to evaluation criteria.

3. Qualification Criteria:

a) Each candidate/bidder, for participating in the evaluation procedure, shall be qualified after meeting the following criteria:

- i. Not be under bankruptcy process and its capitals not be under execution process by executors;
- ii. Not be subject of procedures for the declaration of bankruptcy and there is no mandatory administration or liquidation order by the court, or there is no agreement with creditors, or any other similar procedure;
- iii. Not be convicted with final court decision for acts related to professional activity;
- iv. Should have fulfilled the obligations for the payment of taxes, in conformity with Albanian legislation or applicable provisions in the state of origin;
- v. Should have fulfilled the obligations for the settlement of social insurance contributions, in conformity with Albanian legislation or applicable provisions in the state of origin.

b) The requirements of sub-items i-iii are met upon submission of the Trade Register Extract on Subject's Data, Extract on the Subject's History, issued by the National Registration Center and certification by responsible institutions for the issuance of these documents.

c) The requirements of sub-items iv-v are met upon submission of a certification issued by the Tax Administration.

ç) The foreign candidate/bidder shall certify that it meets all the requirements mentioned above. If the documents mentioned above are not issued in their state of origin, then a written declaration is sufficient by the candidate/bidder.

B. Technical Criteria:

a) Similar works carried out and completed successfully;

b) Professional licenses related to the execution of works according to the object of the contract;

c) Educational and professional qualifications of the responsible staff for the management of works;

ç) Evidence for average labor force of the bidder and number of management staff;

d) Evidence of means, technical equipment which can be made available to the candidate/bidder in order to fulfill the contract.

C. Financial Criteria:

a) Certified copies of balance sheets for one or more years, submitted at the relevant authorities and reports of financial audits, certified by a licensed audit subject;

b) Copies of annual turnover statements.

4. Evaluation Criteria:

A. Technical criteria relating the internal organization and operation of the area:

a) Proposal for the technical design/project, which shall contain:

- Preliminary design (Draft-Idea);
- Data on Technology used;
- Data on infrastructure quality and investment values;
- technical and engineering plan of the area in conformity with the standards used for construction and urban planning;
- execution plan – operational plan and methods for the operation and maintenance of the area;
- program for attracting new industries;
- type of economic activities in the area.

B. Criteria related to environmental impact:

a) Environmental impact of investments and operation of the area;

b) Type of activity based on environmental studies of the area.

C. Criteria related to social impact:

- a) Number of employees;
- b) Program about social responsibility;
- c) Training of employees and transfer of technology;
- ç) Connections with local economy outside the area.

Ç) Duration of works:

a) Graphic, phases and terms on the execution of investments for the development of the area.

D. Criteria related to the financial capacity of the company and possibility for financing the project:

- a) Proposal on the business plan, which shall contain:
 - Capital expenses to make investments in the area;
 - Expenses for operational costs and revenues;
 - Tariff for using the area;
 - Bank guarantee for the required financial capital to make investments in the area.

5. The responsible institution may determine other criteria which are closely linked with the scope and strategy of area development.

6. The responsible institution in the competition documents publishes the evaluation and comparison methodology of candidates/bidders for the selection of the developer.

7. Organizational costs for competition procedure. Expenses for the costs of publication procedures, drafting of documentation and specialized consulting are covered by the awarded candidate/bidder.

8. The evaluation criteria are stipulated in the decision for the announcement of the area.

Article 6

Organization of the competition procedure

The responsible institution issues the order for the commencement of procedures for the selection of the developer, which stipulate:

1. The Documentation Drafting Unit and organization of competition procedures (The Documentation Drafting Unit);
2. The Bids Evaluation Committee (The Committee), which consists of representatives from the responsible institution and, as the case may be, representatives of other ministries or institutions, which are deemed related to the activity to be carried out in the area;
3. Contracting temporary experts assisting the Documentation Drafting Unit and/or the Committee in performing their duties.

Article 7

Documents of competition procedure

1. The responsible institution prepares and publishes in the official website of the institution the standard documents which are used for the development of competition procedures for the selection of the area developer.
2. The Documentation Drafting Unit drafts the documents of the competition procedure which shall be used during the procedures for the selection of the developer, which contain:
 - a) Contract Notice Form;
 - b) Instructions to Candidates/Bidders;
 - c) Qualification and Evaluation Criteria;
 - ç) Declaration Form on Conflict of interest
 - d) Bid Form;
 - dh) Bid Security Form;
 - e) Award Notification Form
 - ë) Candidates/Bidders Disqualification Form;
 - f) Complaint Form
 - g) General conditions and special conditions of the contract
 - gj) Contract Security Form
 - h) Awarded Contract Publication Form
 - i) Terms of Reference

Article 8

Instruction on the application of the competition procedure

- 1 General information. The Award Notification form contains all the required information in order to create possibilities to candidates/bidders to participate or not in competition procedures. Such information includes the name and address of the responsible institution, object of the contract, reference of notice and competition procedure, duration of the contract, requirements for qualification relating administrative – legal, technical and economic-financial capacities, award announcement criteria, location, methods and cost for receiving the documents of the competition procedure; location, date and time for the submission of bids and their opening; language/languages of bids and documents, further information considered as necessary by the responsible institution. The form is published in the Public Notice Bulletin, in the website of the responsible institution and the institution related to the promotion of investments, and in the international and/or domestic press, as appropriate. The publication is made at least in one international newspaper, well-known in the capital and financial market.
- 2 Instructions to bidders. Instructions shall contain all the required information for bid preparation. They include information, inter alia, about the location of the area, status of the land where constructions shall be made, access to exterior infrastructure, geo-technical and hydro-geological conditions of the land if available, about road infrastructure, system of water canalizations, system of potable and industrial waters energy system, information on labor market.

In addition, a preliminary conference may be organized, where all the candidates/bidders may ask for clarifications regarding any uncertainties arising during the preparation of the competition procedure.

The requirements for clarification shall be submitted in writing, not later than 5 (five) days before the deadline for the submission of bids and the respective answers shall be delivered to all candidates/bidders who asked for the documents of the competition procedure, without exception.

Any amendments or alterations in the documents of the competition procedure shall be communicated to each interested candidate/bidder in conformity with the above rules.

In such a case, the deadline for the submission of bids may be postponed in conformity with the circumstances, but not more than 10 (ten) days.

- 3 The Bid Form shall be completed by the candidates/bidders for all the evaluation criteria and contains data for the confirmation of the candidate/bidder that he/she has reviewed and accepted the contents of the competition procedure documents; authorizes the responsible institution to verify the information/documents attached to the bid; vows to execute the contract without reserve or limitation, in conformity with the project/design, technical specifications or terms of reference, and the amount given in the bid. Documents in the form of written statements, under their responsibility, shall be accepted by foreign candidates/bidders, whose states may not issue such documents. Any false data constitutes a legal reason for the disqualification of the candidate/bidder.
- 4 The Bid Security Form serves as a protection measure for the responsible institution, in cases of irresponsible bids or unilateral withdrawal after their opening. Bid security has the form of a deposit or guarantee, issued by a bank or an insurance company licensed by the state to practice this activity. The Candidates/Bidders shall submit the bid security with an amount from 7 million to 15 million ALL, stipulated in the documents of the competition procedure. Bid security shall be valid for 150 (one hundred fifty) days from the deadline for the submission of bids, but the documents of the competition procedure may anticipate a different validity period, based on the potential duration of the procedure. The issuer of the bid security shall set no conditions on the payment and shall pay the amount within 15 (fifteen) days from the receipt of an official request by the responsible institution.
- 5 The Contract Security Form guarantees the responsible institution in cases of contract breach. Before signing the contract, the candidate/bidder awarded as the winner shall submit to the responsible institution a contract security of 1% of the investment value. The contract security has the form of a bank deposit or guarantee. If the awarded candidate/bidder does not submit the contract security within the deadline determined in the award notification, then the responsible institution confiscates the bid security and negotiates for entering the contract with the candidate/bidder ranked second in the final classification.
- 6 Award Notification Form. After the approval of the classification by the executive of the responsible institution, the successful candidate/bidder shall be notified in writing for the acceptance of his bid and for the commencement of contract negotiation. The notification shall contain: the reference of procedure, name and correct address of the candidate/bidder announced winner, description of the project or service of the developer, duration of the contract and amount of the contract, terms of contract, names and amounts of other candidates/bidders, names of disqualified

candidates/bidders and reasons of disqualification and the request for the commencement of the contract negotiation, on condition that contract security had been made.

- 7 Bidders Disqualification Form contains the reasons when a candidate/bidder may not be qualified in the competition procedure, because the bid is not valid. The responsible institution should return or release the bid security after disqualification.
- 8 The Form on the publication of the main terms of the contract with the developer contains the general and special conditions of the contract, which include the integrity of works and services, fundamental rights and obligations between the responsible institution and the developer, and the obligations related to the execution, supervision and administration of the contract.
- 9 Complaint Form serves to candidates/bidders for the submission of administrative complaint, regarding actions or non-actions of the responsible institution. The Complaint Form contains the relevant instructions for its completion and signing.

Article 9

Temporary Joint of Operators

- 1 Economic operators may bid alone or establish groups of economic operators and bid as a sole candidate. In case of joint groups of economic operators, the responsible authority shall ask for a special legal form of joint ventures, aiming at the submission of the bid or request for participation.
- 2 The joint of operators should be established upon a notarized agreement, which stipulates the representative of the group, the rate of participating at work/service and specific elements to be carried out by the members of this group, which cannot be less than 11%. While the leading operator of the group cannot have less than 35%.
- 3 The bid may be submitted by a group of economic operators, where one of them represents the others during the selection procedure and during the execution of the contract.
- 4 If the joint of economic operators is announced the winner, the contract shall be signed by each of the members of this joint.
- 5 Every economic operator shall fulfill the legal requirements provided in the applicable legislation and those determined in tender documents. Technical and financial requirements shall be met by all the group, taken together, in conformity with the rate of participation at work/service stipulated in the deed of agreement.
- 6 The economic operator, a member of this joint, cannot submit simultaneously individual bids. The joint of economic operators does not change during the selection phases and after the submission of the bid, in the contrary, its bid is refused.
- 7 In case of bankruptcy of the representative of the joint of economic operators or in other circumstances, which interrupt its activity during the execution of the contract, the responsible institution may continue the contract with another economic operator, assigned as the representative of the group and proposed by other non-representative

members, on condition that he possesses the legal, technical and financial capacities to execute the contract, otherwise the responsible institution may withdraw from the contract. In case that such circumstance occur to another economic operator, if the representative of the group does not assign a substitute, then the obligations of the failed economic operator may be undertaken by the representative or another member of the group on condition that the latter meet the requirements.

Article 10 **Documentation Drafting Unit**

- 1 The Documentation Drafting Unit is liable for drafting the documents of the competition procedure, in conformity with this decision and the applicable legislation.
- 2 The Documentation Drafting Unit is chaired by the chairman and consists of not less than three persons with at least a lawyer in its composition. The Unit assigns a person, who is responsible for the clarification of candidates/bidders and for the distribution of competition documents. The postponement of the deadline if required as a result of modification in the documents of the competition procedure comes into force only after the written approval of the executive of the responsible institution.
- 3 After drafting the documents of the competition procedure and approval of the executive of the responsible institution, it is published the contract notification form. This notification shall clearly indicate the time, date and address for the submission of bids and their opening.

Article 11 **The Bids Evaluation Committee**

- 1 The Bids Evaluation Committee consists of not less than 5 persons, specialists of the respective field at the responsible institution, and, as the case may be, representatives of other ministries or institutions, who are deemed related to the activity to be carried out in the area and it is liable for the review of bids.
- 2 The persons responsible for drafting the documents of the competition procedure cannot be assigned members of the Bids Evaluation Committee. The Chairman of the Committee is elected among the leading officials of the responsible institution. The Committee shall carry out its duties in full independence and, if any explanations are required relating the documents of the competition procedure; these are obtained by the Documentation Drafting Unit.
- 3 The Bids Evaluation Committee does not perform any other action except those stated explicitly in this decision.
- 4 Persons having a conflict of interest with bidders, in view of the law “On the conflict of interest” cannot participate in the Bids Evaluation Committee. The members of the Committee and each person who has participated in the procedure of drafting documents have the liability to keep the confidentiality of bid content.

Article 12 **Submission of bids**

- 1 Bids shall be submitted manually at the address provided in the documents of the competition procedure within the deadline specified in the documents of the competition procedure, determined as the deadline for the submission of bids. Each bid submitted after the deadline provided in the notification of the responsible institution shall not be reviewed by the Bids Evaluation Committee and shall be returned unopened to the bidder.
- 2 The bids shall be submitted in two envelopes, in one of them clearly marking “Original” and in the other “Copy”. The responsible institution determines in the documents of the competition procedure the number of copies which shall be submitted by the candidate/bidder.
- 3 The envelopes shall be submitted according to the stipulation in standard documents of the competition procedure. The envelopes shall be sealed with the seal of the candidate/bidder participating in the competition. Failure to submit in compliance with the stipulation or lack of a determined element for his presentation makes the bid null and void. In such a case, the bid shall be disqualified and the documentation shall be returned to the candidate/bidder.
- 4 The term for the submission of bids is not less than 30 (thirty) calendar days from the date when the contract notification form was published.

Article 13

Opening of Bids

Opening of bids is public. Opening and evaluation of bids by the Bids Evaluation Committee is made as follows hereunder:

- 1 The Bids Evaluation Committee reads the bids in the presence of candidates/bidders according to the stipulations made in this decision. Members of the Documentation Drafting Unit also participate during the opening and evaluation phase but they are not entitled to vote. They may share opinions only when required and only perform functions of ancillary character, such as: keeping of minutes, arrangement and maintenance of documents, etc.
- 2 The Bids Evaluation Committee reads the name and the address of the candidate/bidder and opens the respective envelope. After opening the envelope, reads in loud voice the documents of administrative-legal, technical and financial qualification. Then, it opens the technical bids and financial bids. The Bids Evaluation Committee communicates to representatives the day, place and time for the final classification of candidates/bidders and then continues the work for the review of bids.
- 3 Based on accepted bids, the Bids Evaluation Committee drafts the final ranking, which shall be communicated at the time given in the competition documents. The term of evaluation by the Bids Evaluation Committee is until 30 (thirty) days. In special cases, upon the substantiated request of the Bids Evaluation Committee the responsible institution may amend this term.
- 4 If more than one bid has the same number of points, then the winner shall be determined at draw in the presence of candidates/bidders.

- 5 The Bids Evaluation Committee within 10 (ten) days from the termination of evaluation, prepares the summary report and proposes the winner to the executive of the responsible institution.

The report contains:

- i. object of the contract;
- ii. a summary of the followed-up procedure;
- iii. the number of bids submitted and a summary for each bid;
- iv. bids evaluation criteria and evaluation according to this criteria for each bid;
- v. ranking of candidates/bids according to the evaluation of the Bids Evaluation Committee;
- vi. complaints, if applicable.

Article 14

Procedure upon application in private property

The Candidate for Developer is subject to the following procedure:

- 1 The candidate for developer applies at the responsible institution by submitting the pre-feasibility study, which shall be in compliance with the requirements of Article 5 of this decision and the act of ownership of the required area or, in cases when the candidate is not an owner of the area, the agreement with the owners of properties included in the area.
- 2 The responsible institution makes the preliminary evaluation in order to determine if:
 - a) the objectives of the project serve to public interest and adjust to the sectoral or regional strategies of development;
 - b) there are no limitations for the execution of the project;
 - c) the project may be executed as planned, by using proposed technologies and without reasonable technical risks;
 - ç) the project has economic stability and financial adaptability;
 - d) the project provides acceleration of regional development and expansion of economic ties between the Albanian market and the international one, as well as the acceleration of goods and capitals.

After making a preliminary evaluation, the responsible institution states the acceptability of the application. If the application is evaluated acceptable, the candidate is required to submit the feasibility study.

- 3 Based on the feasibility study, the responsible institution, in conformity with Article 4 of the Law proposes to the Council of Ministers the announcement of the area and its Developer.
- 4 The responsible institution issues an instruction for the implementation of this procedure.

Article 15

Complaint at the responsible institution

Each candidate/bidder may ask for an administrative review of the competition process when deeming that a decision of the responsible institution was taken in contradiction with the applicable legal and sub-legal acts, acting as follows hereunder:

- 1 The complaint is submitted in writing at the responsible institution within 7 (seven) working days from the date the complainant was informed about the non-acceptance of the bid.
- 2 Upon receipt of written complaint, the responsible institution suspends the continuation of the procedure until the complaint has been fully reviewed, including the issuance of a decisions before the expiry of the deadline.
- 3 The compliant at the responsible institution is made through the respective form, marking the name and address of the complainant, reference to the specific procedure, legal basis and description of the breach, claim of the complainant for the final decision and the respective documentation and the decision of the responsible institution. The above-mentioned elements are necessary for the review of complaint.
- 4 The responsible institution reviews the complaint and takes a reasonable decision within 7 (seven) days after receiving the complaint, which shall be notified to the complainant not later than the following working day.

Article 16 Claim at Court

Against the decision of the responsible institution the claimant is entitled that within 30 (thirty) days from being informed, draft an indictment on the review of the administrative dispute at the competent court. The review of this claim at court does not suspend the continuation of procedures.

Article 17 Approval and publication of the winner

- 1 After the approval of the summary report by the executive of the responsible institution, as provided in this decision, the successful candidate/bidder is notified in writing for the acceptance of the bid and entering of the contract. This notification is published in the Public Notice Bulletin.
- 2 The notification shall contain:
 - a) name and address of the candidate/bidder announced winner;
 - b) duration of the contract and amount of the contract;
 - c) names and amounts of other candidates/bidders;
 - ç) names of disqualified candidates/bidders and reasons of disqualification;
 - d) information if there have been complaints;
 - dh) request that the contract be signed on condition that its security has been made.

Article 18 Negotiation of the Contract

The responsible institution shall invite the awarded candidate/bidder to start the procedures on the negotiation of the contract immediately after the publication of the award notification.

The procedures of negotiation end not later than 90 (ninety) days from the date of publication.

Article 19 The Contract

- 1 The Contract between the responsible institution and the developer reflects the terms of reference for the competition procedure and the criteria according to which it was made the selection of the developer, which are non-negotiable conditions of the contract.
- 2 The Contract contains the requirements stemming from applicable legislation, and anticipates those terms which are evaluated appropriate by the parties, such as:
 - a. definitions, interpretations nature and object of works which should be carried out and services which should be provided by the developer;
 - b. duration of the contract;
 - c. ownership of project assets and obligations of the parties, as the case may be, for making available the project site where the area shall be developed and any other potential facilities;
 - ç. procedures for reviewing and approval of engineering projects/designs, construction plans and specifications by the responsible institution, and the procedures for final testing and inspection, approval and acceptance of the infrastructure network, rules and standards, based on which the project was designed for area construction, which should be in conformity with the best practices aiming at the market development;
 - d. rights and obligations of the responsible institution and developer;
 - dh. sanctions in case of non-fulfilment of obligations;
 - e. the rights of the responsible institution or another public authority to monitor the works which shall be carried out and the services which should be provided by the developer, conditions and extent in which the responsible institution may order amendments for the works and conditions of service;
 - ë. the right of the responsible institution to take other reasonable measures in order to provide proper operation of the infrastructure network and services be provided in conformity with applicable legal and contractual requirements, and the rights to monitor mechanisms and dealing with potential expenses for them;
 - f. obligations of the developer to provide the responsible institution or another public authority, as the case may be, with access, reports and information for the activity in the area;
 - g. Extent of developer's obligations, as the case may be, in order to provide the

change of service, in order to fulfill time requirements, its continuation and provision, in mainly similar conditions for all the users, the mechanisms to deal with potential costs for them;

- gj. Potential obligations, if applicable, of the respective public authorities or responsible institution;
 - h. Circumstances, in which the responsible institution is entitled to undertake, temporarily, the administration of the infrastructure network, for the provision of an effective and uninterrupted service and, in case of failure by the developer, fulfill its contractual duties in order to regulate the breach of the contract;
 - i. Each applicable limitation or condition for the transfer of rights and obligations of the developer according to the contract;
 - j. Each limitation or conditions for the transfer of a controlling interest of the developer;
 - k. Definition and consequences of major force, amendment to law and other amendments in circumstances (including every right of the parties to ask for compensation or review of the contract);
 - l. Social responsibility;
 - ll. Guarantees to fulfil and policies of insurances and rights of employees which should be followed up by the developer for the execution of the project;
 - m. Procedures for the regulation of contract breach made by one of the parties;
 - n. Conditions and procedures for the amendment and/or completion of the contract, the rights and obligations of the parties, over the deadline, or upon completion of the contract (including the transfer mechanism of property items, technology, compensation, service of training and support which shall be provided by the developer);
 - nj. Applicable law and mechanisms for the resolution of disputes which may arise between the responsible institution and the developer;
 - o) The rights and obligation of the parties for confidential information.
3. The GenPlan of the object in 6 (six) original copies, drafted by the topography expert licensed and confirmed by the municipality under the jurisdiction of which it is the territory where the area shall be announced, which shall clearly determine the land area in total, the area under the building, and the detailed alignment of objects if applicable, is part of the contract. The costs for drafting the GenPlan are covered by the Developer.

Article 20
Approval by the Council of Ministers

1. Approval of the developer and the contract is made with the decision of the Council of Ministers.
2. Failure to grant this approval makes the competition procedure non-successful.

Article 21
Amendment to surface

1. The Council of Ministers within the area may stipulate a smaller surface for which the procedures for the selection of the developer shall be carried out.
2. The Council of Ministers on the basis of the request by the responsible institution approves the amendment to the area surface delivered to the developer.
3. In cases of amendment to surface, according to item 2 of this Article 2, the developer shall submit the plan of investments, as amended, together with the administrative-legal, technical and financial documentation.

This decision enters into force after the publication in the “Official Bulletin”.

PRIME MINISTER

EDI RAMA