



IV CONSTITUTIONAL GOVERNMENT

DECREE-LAW NO. 2/2010

OF

Special procedures for awarding construction work up to USD 250,000 to local companies located in the sub-districts

Local development shall be promoted through the contracting of construction works to local companies, thereby promoting know-how and accountability. Local people shall be able to participate in the monitoring of construction works, as they will be the ones who will use the completed infrastructures. In this way, national businesspersons themselves are encouraged to have better performance and to develop their companies in healthy competition. This will also favour the creation of new local companies.

This measure is essential to strengthen economy in the districts, to encourage participation by local companies, to build and rehabilitate roads in the districts, as well as to enable the use of infrastructures such as roads and others by the local community. The experience of the Referendum Package enabled knowledge and evaluation concerning local companies, which allows for a more efficient implementation of the present diploma.

As such, article 2.6 of Decree-Law no. /2010, altering Decree-Law no. 10/2005 of 21 November, which approves the Legal Procurement Regime, requires regulation in terms of the special procedures for awarding construction works up to USD 250,000 to local companies located in the sub-districts.

Thus,

Under articles 115.1 (e), 116 (a) and 116 (d) of the Constitution of the Republic, the Government decrees the following to prevail as law:

Article 1

Socialization of the special procedure

1. Socialization of the projects to be carried out shall be ensured by way of communication to district administrators and / or publication in at least one major newspaper.
2. In the cases where the Government enters into an agreement with an entity concerning the joint management of the projects, the latter shall ensure the communication indicated in article 1.1 to the district administrators.
3. After the communication mentioned in the paragraphs above, district administrators shall socialize information and arrange meetings, to be headed by themselves or together with the entity indicated in article 1.2, so as to record the interest of companies located in the districts.

Article 2

Admissibility requirements for companies

1. Companies must have a business registration certificate or a copy authenticated by the relevant service of the Ministry of Tourism, Trade and Industry, as well as evidence of having paid taxes in the last quarter.
2. Companies must show experience and capability in the area of the project to be carried out.
3. Preference is given to companies located or with work completed or being conducted in the district where the project is to take place.
4. A company may not participate if it has been subjected to a sanction as a result of fraud or corruption.
5. The regime on conflicts of interest must be taken into consideration.
6. Companies must be able to show professional competence, technical capability, commercial feasibility and capability to promote local development.

Article 3
Ranking of companies

Admissible companies shall be evaluated and ranked in the following manner, according to the amount to be attributed:

- (a) Group A – up to USD 20,000;
- (b) Group B – from USD 20,001 to USD 50,000;
- (c) Group C – from USD 50,001 to USD 150,000;
- (d) Group d) – from USD 150,001 to USD 250,000.

Article 4
Criteria for ranking companies

The criteria for ranking companies are:

- (a) Technical capability and professional competence:
 - i. Capability to meet the essential requirements for making payments;
 - ii. Capability to carry out the work;
 - iii. Proved professional experience;
 - iv. Quality of previous work.
- (b) Commercial feasibility:
 - i. Financial soundness of the company;
 - ii. Property and content of the business;
 - iii. Good evaluation in previous dealings with the Government;
 - iv. Capability to meet the terms concerning the making of payments;
 - v. Risk management capability;
 - vi. Capability to meet the project planning and specifications.
- (c) Capability by the company to contribute towards local development:
 - i. Strengthening of the company and of local development in the district;

- ii. Capability to support small and medium companies in their work at district level;
- iii. Use of local resources, namely products and services acquired from local suppliers;
- iv. Enable employment creation;
- v. Enable professional training and skill transfer.

Article 5

Company ranking procedures

1. The ranking of companies is done by a joint district team that includes elements from the Ministry of Infrastructures, the Ministry of Finance, the Ministry responsible for the project and a district representative.
2. Should the provisions of article 1.2 apply, the team must also include officers from the said entity.

Article 6

Company selection procedures

1. Ministries shall draft a list of small and medium works to be done, accompanied by the respective cost estimates per district and project specifications.
2. The selection of companies is done by the team indicated in article 5, based on the criteria and procedures set in the present Decree-Law.
3. After selection, the joint district team shall meet with the selected company in order to agree the planning, specification and stages of the project.

Article 7

Reports and evaluation

1. The joint district team shall draft reports on the evolution of the project and the evaluation of the company, in order to ensure that payments only occur when the project evolution stages and quality are achieved.
2. The joint district team may request the presence of technical staff for drafting the report.

Article 8

Payments

1. All amounts payable within the scope of the present diploma shall be paid in the year the project is done and according to the development plan, specifications, evolution and quality set for the project.
2. Exceptionally when payment is done in a year but work is not completed in that year, the company must provide a bank guarantee to ensure that work will indeed be completed.
3. The amounts foreseen in the present diploma are payable only to companies.
4. Amounts received cannot be transferred among companies.
5. Payments to companies may be: advances and reimbursements.
6. Advances are as follows:
 - (a) Selected companies may require up to 25% of the total cost of the project, through a written document addressed to the joint district team, which shall make a decision.
 - (b) Companies ranked in groups A and B may require up to 50% the cost of the project.
 - (c) There can be no advances for costs concerning the last quarter of the project.
7. Reimbursements are as follows:
 - (a) Companies that pay in advance have the right to be reimbursed, after the joint district team approves their respective request for reimbursement;

(b) After being validated by the joint district team, the original receipts are sent to the National Directorate of Treasury of the Ministry of Finance for reimbursement.

8. Upon receiving the whole amount, companies shall send a declaration to the joint district team attesting to it.

Article 9

Annual calendar

1. The joint team starts the ranking of companies into groups in February.
2. The Ministries draft the list of projects and the estimate of their respective costs in March.
3. By April the joint district team shall prepare and decide the procedures for making payments.
4. All agreements must be signed and all projects must be started by April.

Article 10

1. Decree-Law no. 29/2008 of 28 October is hereby repealed.
2. Government Decree no. 8/2009 of 18 November is hereby repealed.

Article 11

Entry into force

The present diploma enters into force on the day after its publication.

Approved in an Extraordinary Meeting of the Council of Ministers on 30 January 2010.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Finance,

Emília Pires

Promulgated on

Let it be published.

The President of the Republic,

José Ramos-Horta