



TERMS OF REFERENCE

PUBLIC TENDER FOR LARGE SCALE EXPLORATION AND MINING OF SANDS FOR EXPORT PURPOSES

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1. Introduction

The Autoridade Nacional do Petróleo e Minerais (“**ANPM**” or “**Regulatory Authority**”) is a Public Institute established under Decree-Law 20/2008, of 19 June 2008 (as amended by Decree-Law 1/2016, of 9 February 2016, and Decree-Law 27/2019, of 27 August 2019), and has the competence to manage and regulate Mining Activities in the Territory of Timor-Leste in accordance with Law 12/2021, of 30 June 2021, which approved the Mining Code.

Prior to the enactment of the Mining Code, various expressions of interest from national companies for exploration, mining and marketing of large-scale Construction Materials with particular focus on the marketing of river sand for export purposes, were lodged with the Regulatory Authority. Acknowledging the potential economic value of the sand resources [with possible additional incremental economic value in the case of the presence of other economic minerals in the same deposits], the Government has decided to open opportunities for development of sand resources in certain designated areas in Timor-Leste with potential reserves.

The Government is focused in achieving the strategic goals expressly foreseen in the Mining Code, namely, ensure the sustained economic and social development of the country, the creation of jobs and the improvement of the living of the population, protection of the environment, the development of human resources and the increase of tax revenues.

The Mining Code encourages the development of national capability to participate in mineral sector by giving preference to companies incorporated and registered in Timor-Leste in the access and exercise of Mineral Rights for exploration, mining and marketing of Construction Materials. Therefore, pursuant to Article 41.3 of the Mining Code, all qualified Timor-Leste registered companies with Controlling Interests held by Timorese nationals are encouraged to bid in this Public Tender.

ANPM continues to uphold the principal of developing the national mining industry in strict compliance with the Best Practices of the Mining Sector with due consideration to the principal of transparency and accountability.

2. Scope

This Terms of Reference (“**ToR**”) applies to the 2022 Public Tender For the Award of Mineral Rights for Large Scale Exploration and Mining of Sands for Export Purposes (“**Public Tender**”)and establishes the

minimum requirements, selection criteria and relevant Public Tender procedure rules to be met and complied with by the bidders.

3. General Information

3.1 Geological Summary

A brief overview of the Timor-Leste geological potential for exploration, mining, marketing and exportation of sands from the Concession Areas offered under the Public Tender, as well as additional geological and geomorphology information on said Concession Areas can be found in Annex I and Annex II to this ToR.

3.2 Timeline

A detailed Timeline of the Public Tender procedures can be found in Annex III of this ToR. Any change or amendment to the Timeline will be announced by ANPM in its official website available at <http://www.anpm.tl> and any other national newspapers where the Public Tender may be announced.

3.3 Model Exploration and Evaluation License and Mineral Permit

The Model Exploration and Evaluation License, as well as the Model Mineral Permit, to be issued on behalf of the winning bidder(s) are enclosed as Annex IV of this ToR.

4. General Requirements

The applications must be submitted in accordance with the following requirements:

- (a) In order to be eligible to bid in the Public Tender, the bidder(s) must first pre-qualify with ANPM, pursuant to the **Pre-qualification Guidelines** attached in Annex V. The ANPM encourages bidder(s) to pre-qualify as early as practicably possible, in order to benefit from more time to prepare bidding documents and seek clarifications from ANPM.
- (b) The bidder(s) are required to submit a bid for each Concession Area, making express reference to the Concession Area they are bidding for, as set forth in Annex II of this ToR. Bidder(s) are not allowed to submit more than one bid for each Concession Area.
- (c) The bids must be submitted in writing, in duplicate, with a A4 size cover letter (in hardcopy).

- (d) Each bid must be delivered in a sealed envelope, marked *strictly confidential*.
- (e) Each bid must be received at ANPM registered offices located at Ministry of Finance Building, Level 6, Aitarak Laran, Dili, Timor-Leste, until the Bid Submission Close date set forth in the official Public Tender Timeline in Annex III of this ToR, by no later than 16:00 Timor-Leste time.
- (f) For each bid the bidder(s) must pay a fixed non-refundable application fee of US \$150.00 (one hundred and fifty Dollars of the United States of America) to be deposited in the Ministry of Finance Account as detailed in Annex VI to this ToR, until the Bid Submission Close date referred to in (e) above.
- (g) The proof of payment of the application fee referred to in (f) above, including bidder(s)' name and contact details and a description of the payment, must be forward to the following e-mail address: *cm_tender@anpm.tl*
- (h) Bid application language shall be in Portuguese or English language.
- (i) Each bidder(s) participating in the Public Tender must appoint one or more individuals as Accredited Representatives before ANPM, for purposes of handling any and all correspondence related to the Public Tender. The Accredited Representative(s) shall be appointed by means of a Power of Attorney substantially in the form of the one of Annex VII of this ToR, duly signed by an authorized signatory of the bidder(s) and notarized. *[It is recommended that the Accredited Representative(s) nominated is available throughout the Public Tender process to ensure that the information requests and other communications with ANPM are timely, properly and efficiently handled by the bidder(s)].*
- (j) Bidder(s) in consortium are required to submit a letter of intent signed by duly authorized representative with powers to bind each member of the consortium. The letter of intent must state that, if a Mineral Permit is awarded to the consortium, all the members thereof acknowledge and undertake to be jointly and severally liable for the obligations and any damage that may be caused in connection with the respective Mineral Permit.
- (k) Any amendments to the Bid Summary Form enclosed as Annex VIII of this ToR must be counter-signed by the Accredited Representative of the bidder(s) that is submitting the bid and communicated to ANPM prior to the term of the Bid Submission Close date set forth in the official Public Tender Timeline in Annex III of this ToR.
- (l) After the Bid Submission Close date – as set forth in the official Public Tender Timeline in Annex III of this ToR - the bidder(s) are not allowed to withdraw their bid(s). Any withdrawal after the opening of the bid envelopes entitles the ANPM to enforce the Bid Bond to be issued in favor of the State of Timor-Leste in the form of a bank guarantee as set forth in Annex IX of this ToR document.

- (m) Bid evaluation will be primarily based on the work program, financial and technical capabilities and the extent to which the bidder(s) proposes to contribute to the development of sustainable mining activities in Timor-Leste. In order to make an evaluation of the bids as objective as possible, the Evaluation Commission appointed for review of the bid applications shall use an evaluation matrix award points to each type of activity as a basis for the ranking as further detailed in Annex X. The composition of this evaluation matrix is the one set forth in Annex X of this ToR.
- (n) The Evaluation Commission shall also review the bid support materials with the technical basis for the bid and is allowed to reject any bid which, in its sole discretion, may be deemed unresponsive to, or inconsistent with, the evidence provided in relation to the technical capabilities of the bidder pursuant to Section 5.1 (a) of this ToR. In the event of rejection, the Evaluation Commission shall detail its reasoning and the technical basis of the rejection.
- (o) The Mineral Permit shall be awarded to the bidder(s) who submit the best bid, as may be assessed by the Evaluation Commission, taking into consideration the bid proposals in terms of scope, scale, nature and content of the proposed work program, financial and technical capabilities and the extent to which the bidder proposes to contribute to the development of sustainable mining activities in Timor-Leste.
- (p) Any bids received after the term of the Bid Submission Close date set forth in the official Public Tender Timeline in Annex III of this ToR shall not be either opened or considered. Bids received prior to the Bid Submission Close date set forth in the official Public Tender Timeline in Annex III of this ToR shall remain closed until such time as all bids are simultaneously opened and evaluated.
- (q) The bidder(s) shall submit a written statement explicitly committing to, in the event of award of a Mineral Permit, submit a Performance Bank Guarantee in the form set forth in Annex XI of this ToR to cover the exploration costs as budgeted in the relevant work program(s) and budget(s).

5. Bidding Qualification Requirements

To be eligible as potential bid winner, bidder(s) are required to submit the following documental evidence and proof of financial and technical capabilities, proposed work program and the extent to which the bidder proposes to contribute to the development of sustainable mining activities in Timor-Leste.

5.1 Technical Requirements

- (a) The bidder(s) shall provide information on their technical capabilities by submitting preliminary studies or any assessment indicating potential sands deposit in the Concession Area(s) of interest, based on any data available;

- (b) Duly filled-in work programs in accordance to the Bid Summary Form of Annex VIII of this ToR, covering the bidder(s)' proposed exploration work program and budget commitments, covering data evaluation, surveys and other relevant evaluations;
- (c) The financial and technical resources of the bidder(s);
- (d) The previous experience of the bidder(s) in the conduct of mining activities for sand and/or other minerals; and
- (e) The extent to which the bidder(s) proposes to contribute to the development of sustainable Mining Activities in Timor-Leste.

5.2 Legal and Financial Requirements

The bidder(s) shall be required to provide the following additional information and documents:

- (a) Corporate documentation evidencing the incorporation and registration of the bidder(s) (all members of a consortium, where applicable) in Timor-Leste and a Controlling Interest (50% or more of the votes at the General Assembly or equivalent body or the power to appoint the majority of the board members or any other form of management or control) held by Timorese national individuals.
- (b) Proof of payment of the fixed and non-refundable application fee in accordance with Section 4(f) above;
- (c) Proof of financial capabilities through the submission of the last two (2) audited financial year statements;
- (d) A first demand Bid Bond issued by a local bank, in the amount of twenty thousand dollars of the United States of America (US\$ 20,000), which shall be refundable upon the award of the Mineral Permit. Detailed information on the Bid Bond is set forth in Annex IX to this ToR.
- (e) A statement outlining acceptance to the right of the State of Timor-Leste, through the National Mining Company, to participate in the Mining Activities, pursuant to Article 22 of the Mining Code.

5.3 Local Communities Engagement and Local Content Requirements

The bidder(s) s are also required to submit:

- (a) Proposed plan for resettlement and protection of local communities;
- (b) Proposed plan for procurement of Timor-Leste Goods and Timor-Leste Services;
- (c) Proposed plan for employment and training of Timor-Leste employees;
- (d) Proposed plan for transfer of technology and know-how to Timor-Leste entities and nationals.

5.4 Health, Safety and Environment Requirements

The bidder(s) must submit a written statement outlining its policy on:

- (a) Health, safety and welfare of the persons involved in the Mining Activities;
- (b) Protection of the natural and marine environment, and prevention, minimization and remedy of pollution occurrences and other environmental hazards.

6. Bid Summary Form

The copy of the official Bid Summary Form for each Concession Area is attached as Annex VIII to this ToR. Any documentation required to be submitted along with the Bid Summary Form, but previously submitted by the relevant bidder for pre-qualification purposes and not outdated at the time of the submission of the bid does not need to be resubmitted, being the bidder only required to make an express reference to its previous submission in the Bid Summary Form.

7. Bid Acceptance

- a) The Evaluation Commission shall not evaluate any bid that is submitted without the attachment of the proof of payment of as required under Clause 5.2.(a) and Bid Bond as required under Clause 5.2.(d) of this ToR,
- b) Upon completion of the evaluation of the bids, the Evaluation Commission shall prepare an evaluation report (“**Report**”) which shall be submitted to the Member of Government responsible for Mineral Sector,
- c) The acceptance or rejection of homologation of the Report shall be made within fifteen (15) working days as of the date in which Report is received by the Member of Government responsible for Mineral Sector.
- d) The ANPM shall notify the bidder(s) of the homologation of the Report and its content within three (3) working days as of the date of decision of the Member of Government responsible for Mineral Sector.
- e) A summary of the Report, the assessment of the proposals and the homologation decision shall be published in the Official Gazette within ten (10) working days as of the date of the homologation of the Report.

8. Appeal

The bidders may appeal the homologation of the Report pursuant to the following process.

- a) Within three (3) days as of the date of service of notice of the homologation of the Report, submit an appeal to the member of Government responsible for the Mineral Resources sector, pursuant to the law.
- b) The appeal will be submitted by means of an application in which the appellant must set out all the grounds of the appeal and any supporting evidence deemed necessary, if any.
- c) The appeal must be decided within fifteen (15) days counting from the date the process is received by the member of the Government responsible for the Mineral Resources sector. if no decision is made within fifteen (15) days, the appeal shall be deemed tacitly rejected.

9. Explanation of Information

- a) The ANPM is available to provide clarification or additional information regarding the Public Tender proceedings or the Concession Areas within the Timeline set forth in Annex III.
- b) Questions and any other communication on this Public Tender may be addressed to ANPM at: *cm_tender@anpm.tl*
- c) Further details and advice shall be posted at ANPM's website: <http://www.anpm.tl>

10. ANPM's Rights

- a) ANPM may suspend or cancel the Public Tender procedures for any of the available Areas at any time.
- b) ANPM reserves the right to unilaterally revise this ToR (including the Timeline and the procedures of the Public Tender) at any time.
- c) Any change to this ToR shall be communicated at ANPM's website: <http://www.anpm.tl> and all the media means where the Public Tender has been announced.