

On the basis of Article 7a of the Law on Privatization of Economy (Official Gazette of the Republic of Montenegro, No 23/96 and 6/99), the Government of the Republic of Montenegro, at the session held on the 1st of June 2000, adopted the

DECREE ON THE SALE OF SHARES AND PROPERTY THROUGH A PUBLIC TENDER

(Official Gazette of the Republic of Montenegro, No 8/99, 31/00, 14/03, 59/03)

I GENERAL PROVISIONS

Article 1

This Degree shall regulate the method of sale of shares and property through a public tender (hereinafter: tender sale).

Article 2

Tender sale shall mean a method of privatization through the public gathering of bids of potential buyers, in accordance with determined rules and conditions of sale beforehand.

The Tender Commission shall organize and implement preparatory activities regarding tender.

Article 3

The Privatization Council shall appoint tender commissions for certain groups of companies.

The Tender Commission shall have at least seven members.

The Tender Commission shall implement a tender procedure in the name and for the account of the seller, in accordance with this Decree.

Article 4

The Tender Commission shall be authorized to:

- 1) organize and implement the tender;
- 2) open and evaluate the bids;
- 3) determine which bids are considered as valid;
- 4) prepare a tender list and a report to be submitted to the Council;
- 5) inform bidders on the tender results;
- 6) keep and sign the minutes; and
- 7) declare a tender unsuccessful according to certain rules;
- 8) shorten the deadlines referred to in this Decree, with respect to tender organization and implementation for companies being privatized in accordance with an accelerated tender, with the consent of the Privatization Council.

The Tender Commission may make a decision if more than half of the members attend the meeting.

The Tender Commission shall make a decision by a majority of votes of the total number of its members.

Article 5

The Agency for Economic Restructuring and Foreign Investments of Montenegro shall organize all activities regarding tenders in accordance with the decisions and instructions of the Privatization Council and Tender Commission.

Article 6

The Tender Commission may engage experts (financial, legal and technical if needed) for carrying out professional activities and rendering assistance in organization of tenders and selection of the best bidder.

Article 7

All legal and physical, domestic and foreign, persons shall be entitled to participate in a tender.

Article 8

Upon adoption of the decision on the annual privatization plan and the decision on the sale of a company through a tender, the company may not decrease or increase share capital during the tender procedure, perform any reorganization and restructuring and investment, sell parts of the property, or conclude significant long term arrangements, without a previous consent of the Privatization Council.

A competent body of the seller shall make a decision on the sale through a public tender by which it can define important elements for sale, such as the minimum price, volume of investment, manner of payment, to be complied with by the Tender Commission in the procedure of tender implementation.

The decision of the seller based on the implemented tender procedure shall be binding.

2. TENDER PROCEDURE

Article 9

The tender procedure shall include:

- 1) preparing the tender;
- 2) submitting and receiving bids;
- 3) opening and evaluating bids, and
- 4) concluding the contract.

Article 10

Preparation of tender shall include:

- 1) Engagement of the experts referred to in Article 6 of this Decree, if needed;
- 2) Preparation of tender documentation: information memorandum, letter of intent, conditions and recommendations for preparing bids, text of the advertisement, system for evaluation of bids, applications for applying to the tender, and
- 3) Public announcement of the invitation for submitting bids for participation in the tender.

Article 11

Deleted. (Official Gazette of the Republic of Montenegro, No 14/03)

Article 12

The Tender Commission, assisted by experts and competent bodies in the company, if needed, shall prepare an information memorandum on the company, as well as other tender documentation with the conditions of the tender and the criteria for evaluating bids.

The conditions of the tender have to be defined in terms of quantity, value or technically, as well as in terms of time.

The Tender Commission shall determine the criteria for the sale through tender, as well as deadlines and conditions for implementing the tender, including:

- financial requirement to be met by a bidder in the tender;
- limitations on participation in the tender;
- criteria for selection of bids;
- other elements that the Tender Commission will take into account in evaluation of bids;
- data to be required from bidders (description of a bidding company, proofs of financial capacity, business plan, etc.);
- conditions under which one may visit and make a tour of the company being sold; and
- deadlines for tender implementation.

Article 13

The Tender Commission shall prepare the information set which includes (at least) the following documents:

- invitation for participation in the tender;
- conditions and recommendations for preparing bids;
- text of information memorandum;
- review of regulations with respect to the privatization process in the Republic of Montenegro;
- system for bid evaluation;
- application for applying to the tender; and
- draft contract of the sale.

Article 14

For every company whose shares or assets are being sold, a time period for preparing and submitting bids shall be determined in advance, the duration of which is from one to three months.

Within the deadline referred to in paragraph 1 of this Article, bidders shall be given the opportunity to visit and make a tour of the company being sold under the conditions established by tender rules.

Participant in a tender shall be obliged to pay in advance a certain amount of funds (deposit and compensation) envisaged by tender requirements.

Article 15

An invitation to participate in the tender shall contain (at least) the following information:

- name and registration number of the company;
- summary of data on the company;
- deleted (Official Gazette of the Republic of Montenegro, No 14/03);
- ownership structure and number of shares, i.e. assets being sold;
- time and method of tour of the company and checking data provided in the information memorandum, with first and last name, telephone number and address of a person in charge of contact with bidders, and
- deadlines for tender implementation, including also a final deadline for participation in tender.

The tender shall be published in at least one leading daily newspaper, and for large and public utility companies in the international press (Financial Times, International Herald Tribune, Wall Street Journal, The Economist or other magazines) as well as on the Internet.

3. SUBMITTING AND RECEIVING BIDS

Article 16

By a bid, tender conditions shall be accepted and price for subject of the tender offered.

Submitted bids cannot be altered or amended.

Bids may be withdrawn within the 7-day deadline prior to expiration of the tender deadline.

Bids shall be submitted in person or by registered mail in three closed envelopes.

The original bid shall be in the envelope number 1, with the inscription "original".

All other supporting documentation shall be in the envelope number 2, with the inscription "supporting documentation".

The envelope number 1 and the envelope number 2 shall be delivered together in the envelope number 3.

Bidders shall make a deposit and compensation for participation in the tender.

Article 17

If the bid is null and void or if it is not accepted, the deposit shall be returned to the bidder within seven days upon the expiration of the deadline for determining the tender list.

Costs of deposit transfer shall be borne by the bidder.

Interest shall not be paid on a deposit returned within the established deadline.

For a deposit restituted after the deadline, a default interest for the days exceeding the deadline shall be calculated.

The deposit shall be included in the price for the bidder whose bid is accepted.

If the bidder whose bid is accepted does not sign the contract within the established deadline or does not make the payment of selling price within the contracted deadline, he/she shall lose the right on deposit restitution.

Article 18

Secretary of the Tender Commission shall receive the bids and keep records thereon, according to the sequence of their receipt.

Bids delivered by registered mail shall be recorded according to the date of their receipt.

Article 19

Every recorded participant in the tender who wants to withdraw from further participation in the procedure must apply to the Tender Commission in writing and present the certificate on recording the bid, in accordance with Article 16 of this Decree.

The Tender Commission shall issue the certificate on withdrawal from participation in the tender, and the deposit shall be restituted without being reduced within the seven-day deadline.

4. OPENING AND EVALUATING BIDS

Article 20

Tender participants shall be informed on the place and time of opening of bids.

Bidders, their representatives or proxies may attend the opening of bids.

The Tender Commission shall open the bids and determine their formal accuracy.

Bids, for which it is established that they are not timely received or formally accurate, shall be considered null and void.

The Tender Commission may ask for the clarifications regarding the bids or their presentation.

Evaluation of bids shall be done directly at the meeting of the Tender Commission, on the basis of point system based on the criteria determined in the tender rules.

Article 21

All bids shall be opened at the same meeting of the Tender Commission.

Every member of the Tender Commission shall perform individual evaluation of every bid.

Tender list shall be established within 15 days as of the day of bid opening.

Article 22

Ranking of bids shall be performed on basis of established criteria.

The Tender Commission shall submit to the Privatization Council the report on tender results for adoption.

Article 23

The Tender Commission shall, upon the adoption of the report by the Privatization Council, inform all tender participants on tender results.

Tender participants shall have the right to file an objection with the Privatization Council within 7 days from the day of submission of the notice of tender results.

Article 24

The Tender Commission may reject the bid if:

- a) a bidder or his guarantor is in the procedure of liquidation or bankruptcy;
- b) the bid is not in harmony with conditions, recommendations and requirements referred to in the invitation for participation in tender, and rules and instructions for submission of bid;
- c) value of paid deposit is lower than the established amount, and if the payment is not registered with some commercial bank for the tender needs.

The Tender Commission may refuse a bid in all phases of the tender implementation, if it becomes aware of the facts that can have impact on a free will of contracting parties.

If a bid is rejected, the Tender Commission shall be obliged to inform a bidder in writing within the seven-day deadline from the day of official opening of bids, whereas if a bid is refused within 7 days from the day of becoming aware of the reasons for refusal.

Article 25

If the Tender Commission receives only one bid until the expiration of final deadline for submission of bids, the Tender Commission may directly negotiate with a bidder.

Article 26

Bidder whose bid is ranked on the first place shall be invited to negotiate the conclusion of the contract with a seller.

If the contract of sale is not concluded with the first-ranked bidder, the Tender Commission shall invite the following best ranking bidder to negotiate the conclusion of the contract.

If the bidder refuses to sign the contract, which is contained in the tender documentation, within the prescribed deadline, it shall be considered that the buyer withdrew from the tender.

If more than two first ranked bidders do not accept signing of the contract, the Tender Commission shall suggest to the Council which action to undertake, including the possibility of proclaiming the tender unsuccessful.

Article 27

Members of the Tender Commission can neither have ownership rights (except if they are acquired in the procedure of ownership transformation) in the company being sold nor be a buyer in tender.

Members of the Tender Commission cannot be involved in tender procedure in cases when there is a conflict of interest.

When it is not certain if there is a conflict of interests, the Privatization Council shall adopt a relevant decision.

Member of the Tender Commission shall not have a voting right in bodies that he is a member of, which adopt final decisions (competent body of the company, fund, Privatization Council, the Government of the Republic of Montenegro)

When it is determined that the bidder is in kinship up to the third degree in the straight line with a member of the Tender Commission, the member of the Tender Commission shall be replaced for that specific tender.

If the provisions of this Article are not complied with or their violation is established after the conclusion of the contract, the Privatization Council shall decide which action to undertake in accordance with domestic and international law.

5. FINAL PROVISIONS

Article 28

The Agency of Montenegro for Economic Restructuring and Foreign Investments shall keep in its archive the documentation on tender for a period of at least three years.

Article 29

This Decree shall come into force on the eighth day upon its publication in the Official Gazette of the Republic of Montenegro.

Podgorica
4 March 1999