

DECREE-LAW NO. 2/2010, OF FEBRUARY 18

Special procedures for the assignment of civil construction work up to US \$250,000 to local companies based in the sub-districts

Local development shall be promoted by the assignment of civil construction work to local companies which will promote the development and construction of works with proper knowledge and responsibility. As future interested parties, the local population has the possibility to participate in the supervision of such works. In this manner, the national entrepreneurs are encouraged to do better and develop their companies, in a spirit of healthy competitiveness, this being meant to promote the emergence of new local companies.

This measure is essential to strengthen the economy of the districts, to encourage the participation of local companies, to construct and rehabilitate roads in the districts, as well as to allow the use of infra-structures such as roads and others by the local community. The experience of the Referendum Package provided knowledge into and assessment of local companies, which in turn facilitate a more efficient implementation of the current document.

Thus, no. 6 of article 2 of Decree-Law no. 1/2010, which introduces changes in Decree-Law no. 10/2005 of November 21, which approves the Legal Regime of provision, needs regulation concerning special procedures for the assignment of civil construction work up to US \$250,000 to local companies based in the sub-districts.

Thus,

The Government decrees the following, according to item e) of no. 1 of article 115 and items a) and d) of article 116 of the Constitution of the Republic, to become law:

Article 1

Announcement of the special procedure

1. Notice of the projects to be carried out is guaranteed by the transmission of information to the district administrators and/or by its publication in at least one wide-circulation newspaper.

2. If the Government makes a business deal with a given entity for joint management of the projects, this entity should secure the transmission of information to the district administrators, according to no. 1 above.
3. After transmission of information referred to in the above numbers, the district administrators will publicize it in the district and schedule a meeting to be conducted by themselves or together with the entity mentioned in the previous number, with a view to recording the interest of the companies based in the district.

Article 2

Requisites for admittance of companies

1. Companies must have a certificate of business registry or an authenticated copy by the competent service of the Ministry of Tourism, Commerce and Industry, as well as the proof of tax payment in the previous trimester.
2. Companies must show their experience in the field of the project to be carried out, and their capacity to carry it through.
3. Preference is given to companies which have headquarters or work done or in the making in the district where the project is to be carried out.
4. Participation of a given company is not admissible when this company has suffered sanctions for fraud or corruption.
5. The regime of conflict of interests must be observed.
6. Companies must be able to show their professional competence and technical capacity, commercial viability and capacity to promote local development.

Article 3

Classification of the companies

Companies that are fit for admission are evaluated and classified in the following manner, according to the value to be awarded:

- a) Group A – up to US \$20,000;
- b) Group B – from US \$20,001 to US \$50,000;
- c) Group C - from US \$50,001 to US \$150,000;
- d) Group D - from US \$150,001 to US \$250,000.

Article 4

Criteria for the classification of companies

The criteria for the classification of companies are the following:

- a) Technical capacity and professional competence:
 - i. Capacity to fulfill the essential requisites for the allocation of funds;
 - ii. Capacity to accomplish the work;
 - iii. Proven professional experience;
 - iv. Quality of the work previously executed.
- b) Commercial viability:
 - i. Financial stability of the company;
 - ii. Title and content of the business deal;
 - iii. Good appraisal in previous business deals with the Government;
 - iv. Capacity to accomplish the terms of the allocation of funds;
 - v. Risk management capacity;
 - vi. Capacity to accomplish the planning and specifications of the project.
- c) Capacity of the company to contribute to local development:
 - i. Reinforcement of the company and of local development in the district;
 - ii. Capacity to support small and medium companies in their provision of work at district level;
 - iii. Use of local resources, namely acquisition of products and services from local suppliers;
 - iv. Enabling the creation of jobs;
 - v. Enabling professional training and transmission of knowledge.

Article 5

Procedure for the classification of companies

1. Classification of the companies is carried out by a joint district team, including elements from the Ministry of Infra-Structures, Finances and from the ministry responsible for the project and a district representative.
2. In the cases where what is established in no. 2 of article 1 applies, the team must include elements from the respective entity.

Article 6

Procedure for the selection of companies

1. The ministries will prepare a list of small and medium works to be carried out, together with the respective estimate of cost per district and the specifications of the project.
2. Selection of the companies is carried out by the team mentioned in the above article and based on the criteria and procedures established in the present decree-law.
3. After selection, the joint district team will get together with the chosen company in order to agree on the planning, specifications and stages of the project's progress.

Article 7

Reports and evaluation

The joint district team shall produce reports on the progress of the project and the evaluation of the company in order to guarantee that payments are made only when the stages of the agreed project progress and chosen quality have been met.

The joint district team may require the presence of technical staff to prepare the report.

Article 8

Payments

1. All the funds to be paid in the context of the present document are paid within a year of the project's completion and according to the development plan, specifications, progress and quality defined for the project.
2. In exceptional cases, when payment is made in a specific year but works have not been concluded in that year, the company must provide a bank guarantee, the aim of which is to guarantee the completion of the works.
3. The funds established in the present document are paid only to companies.
4. The funds received are not transmissible between companies.
5. Payments to companies can be: payment in advance and reimbursement.
6. Payment in advance takes place in the following manner:
 - a. The chosen companies may ask for up to 25% of the total cost of the project, in writing, addressed to the joint district team, which will then make a decision.
 - b. As for companies classified under groups A and B, these may ask for up to 50% of the project cost.

- c. Payments in advance to cover costs of the last trimester of the project are not allowed.
7. Reimbursement takes place in the following manner:
 - a. In cases where companies pay in advance, they are entitled to reimbursement, once their request for reimbursement, addressed to the joint district team, is approved;
 - b. After being validated by the joint district team, the originals of the receipts are sent to the National Treasury Board of the Ministry of Finances, for reimbursement.
8. When the full funds have been received by the company, it will send the joint district team a declaration attesting its receipt.

Article 9

Annual calendar

1. The joint team will start classifying the companies in groups during the month of February.
2. During the month of March, the ministries will prepare the list of projects and an estimate of the respective costs.
3. The joint district team will prepare and decide upon the requests for the allocation of funds until April.
4. Until the end of April, all agreements must be signed and projects started.

Article 10

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

Article 11

Entry into force

The present document enters into force the day after its publication.

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

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Finances,

Emília Pires

Promulgated on 12/2/2010

To be published.

The President of the Republic,

José Ramos-Horta