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Mining Act

The Mining (Award of Mineral Rights by Tender) Regulations Legal Notice 153 of 2017

Legislation as at 31 December 2022

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The Mining (Award of Mineral Rights by Tender) Regulations (Legal Notice 153 of 2017)

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MINING ACT

THE MINING (AWARD OF MINERAL RIGHTS BY TENDER) REGULATIONS

LEGAL NOTICE 153 OF 2017

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1. Citation

These Regulations may be cited as the Mining (Award of Mineral Rights by Tender) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Mining Act (Cap. 306);

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to mining;

“Corporation” means the National Mining Corporation established under section 22 of the Act;

“Evaluation Committee” means the Committee established under Regulation 7;

“first-come, first-served” has the meaning assigned to it in the Act;

“large scale operation” has the meaning assigned to it in the Act;

“Mineral right” has the meaning assigned to it in the Act;

“Mineral Rights Board” means the Minerals Rights Board established under section 30 of the Act; and

“Principal Secretary” means the Principal Secretary for the time being responsible for matters relating to mining.

3. Application of Regulations

These Regulations shall apply to large scale mineral rights.

4. Designation of areas for tender

- (1) The Cabinet Secretary shall, on the advice of the Mineral Rights Board designate an area to be reserved for an application by tender where—
 - (a) an area possesses high mineral prospectivity; or
 - (b) a mineral deposit is of significant economic or commercial value.
- (2) The designation shall not affect the rights of holder—
 - (a) where such rights have been granted prior to the commencement of this Act or these Regulations; or
 - (b) where the designation is made after a mineral right has been granted.

- (3) The Cabinet Secretary shall publish the designation in the Gazette and a newspaper of wide circulation.
- (4) Where an area is designated under this Regulation, a mineral right shall be granted by competitive and transparent public tender or, in special circumstances, by direct negotiation.

5. Method of tender

The Cabinet Secretary, on the advice of the Mineral Rights Board, shall decide how the area shall be offered for tender.

6. Procedures for competitive tender

- (1) The tender referred to in regulation 4 (4) shall—
 - (a) be advertised in the Gazette, a local newspaper of wide circulation and international newspapers; and
 - (b) invite qualified local and international companies to submit expressions of interest.
- (2) The Corporation may express interest and may participate in a public tender on the same basis as any other interested party.
- (3) The tender under sub regulation (1) shall include—
 - (a) the size of the area;
 - (b) geographic location of the area;
 - (c) the type of mineral right;
 - (d) the mineral or minerals;
 - (e) an indication of the extent of the geological information available, and where it can be accessed;
 - (f) the information to be included in the expression of interest, including the experience, financial capacity and technical capability of applicants;
 - (g) the date and time deadline for submission of expressions of interest; and
 - (h) the address for submission.
- (4) The Director of Geological Survey shall compile detailed geological information and the terms of reference of the designated area which shall be published on website of the Ministry.
- (5) The Evaluation Committee shall consider all expressions of interest and shortlist based on the experience, financial capacity and technical capability of the applicants within thirty days of the opening of the tender documents and shall submit the list to the Mineral Rights Board.
- (6) The Mineral Rights Board shall within seven days of receipt of the list submitted under regulation (5), consider the list and submit the list and its recommendations to the Cabinet Secretary.
- (7) The Cabinet Secretary shall in writing and with reasons, approve or reject the list submitted under sub regulation (6), within fourteen days of receipt from the Mineral Rights Board.
- (8) The applicants who have been shortlisted shall be notified and be provided with a Request for Proposals, including the terms of reference and the deadline for submission, which shall be not later than three months of such notification.
- (9) All shortlisted applicants shall confirm their intention to bid within seven days of notification or the invitation shall lapse.

- (10) The applicants who have been shortlisted may be allowed to inspect the area and carry out non-invasive investigations including the taking of a limited number of samples.

7. Bid selection and evaluation

- (1) The Principal Secretary shall in consultation with the Cabinet Secretary set up an Evaluation Committee consisting of the—
- (a) Director of Mines who shall be the Chairperson;
 - (b) Director of Geological Surveys;
 - (c) Director responsible for Mineral Promotion and Value Addition;
 - (d) Head of Procurement who shall be the Secretary; and
 - (e) Chief Finance Officer.
- (2) The role of the Evaluation Committee shall be to deal with the technical and financial aspects of any tender or direct negotiation under this regulation as well as the negotiation of 'the process including evaluation of' bids, proposals for pre-qualification, expression of interest and any other roles assigned to it.
- (3) The Committee may co-opt technical experts who are not employees of the Ministry to assist it in its functions.
- (4) The evaluation and the selection of the preferred bidder shall be carried out subject to the law relating to public procurement.
- (5) The Evaluation Committee shall submit recommendations of the evaluation to the Principal Secretary.

8. Direct negotiations

- (1) Where no bids are received following the competitive public tender or where the bids received do not satisfy the minimum criteria, the tender shall be re-advertised.
- (2) Where no bids are received after the re-advertisement or where they do not meet the criteria specified in the re-advertisement, the Cabinet Secretary shall on advice of the Mineral Rights Board, enter into direct negotiations with any person.
- (3) Where the Cabinet Secretary intends to conduct direct negotiations, the Cabinet Secretary shall issue a notice of thirty days in the Gazette, at the website of the Ministry and in at least two newspapers of wide circulation.
- (4) The notice under sub regulation (3) shall give such details including but not limited to an indication of the scale of the expected investment and an invitation for expressions of interest.
- (5) Any objections to direct negotiations shall be referred to the Mineral Rights Board for consideration and the Mineral Rights Board shall submit its recommendations to the Cabinet Secretary for determination.
- (6) The Cabinet Secretary shall publish the decision made under sub regulation (5) on the website of the Ministry.
- (7) Where the Cabinet Secretary receives more than one expression of interest for direct negotiation, the Mineral Rights Board shall develop the criteria for the evaluation of proposals.
- (8) The Cabinet Secretary shall, on the advice of the Mineral Rights Board, commence direct negotiations with any qualified party that has declared an interest or with any other qualified party or parties by invitation.

- (9) Direct negotiations under this regulation shall be conducted by a team comprising of—
- (a) the Principal Secretary who shall be the Chairperson;
 - (b) the Director of Mines;
 - (c) the Director of Geological Survey;
 - (d) a representative of the Mineral Rights Board;
 - (e) a representative of the Public Procurement Regulatory Authority;
 - (f) a representative of the National Treasury;
 - (g) a representative of the Attorney-General;
 - (h) a representative of the County Government of the area where the proposed mineral or mining activity shall be undertaken; and
 - (i) a representative of the National Lands Commission.
- (10) Where necessary or if required, local or international experts may be hired to provide assistance to the negotiation team.

9. Grant of a mineral right

Subject to the Act, the Cabinet Secretary on the advice of the Mineral Rights Board shall grant a mineral right to the person with the successful proposal.