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Newsletter



Expert Legal Assistance

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General regulatory framework for hiring of services and goods from national companies by companies in the oil industry

An Expert Legal Assistance Publication



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*** Ministry of Petroleum's Dispatch no. 127/03, from November 25th / Presidential Decree no. 82/18, of April 2nd that revoked Decree no. 48/06, of September 1st.**

It is important to understand the limitations that foreign companies might face when providing services or selling goods/equipment to the Angolan oil industry, this is the *heart of the matter*.

In Angola, service providing and purchases of goods/equipment to/by the Angolan oil industry are subject to regulation in accordance to the Ministry of Petroleum's Dispatch no. 127/03, from November 25th (currently Ministry of Mineral and Petroleum Resources "MIREMPET").

This rule establishes the general contracting regime to be observed by the oil operating companies when hiring local or foreign companies, suppliers of goods or service providers. The purpose of this rule is to ensure protection to Angolan business in this area, and increase the use of national goods and service rendering in the oil industry.

Considering the goals of this Law, three different regimes were established.

a) Exclusive Angolan entrepreneurship

Applies to all activities and services rendering that do not require large amount of resources and basic, medium or superior non-specialized know-how should only be provided by foreign entities by request of Angolan companies providing those activities (subcontracting). This involves Catering, cleaning and gardening, pressure test to oil/gas pipelines and storage tanks, transportation from the port to the oil stations, general maintenance of equipment and vehicles.

b) Semi-agreement regime

Applies to all activities that require a reasonable level of resources and superior non-specialized know-how. These activities can be granted by foreign companies in the context of a partnership with Angolan entities. This involves geographical readings, construction and assembly of metallic structures, supervising of oil shipments, pipeline maintenance, lab testing on soil and liquids, probing.



c) Competition regime

Applies to all activities not detailed in the previous regimes that require superior resources and specialized knowhow in the oil industry may be performed by foreign companies in Angola. Nevertheless, joint-ventures and partnerships with Angolan companies are also recommended. This applies to all unlisted activities in a) and b).

For purposes of Dispatch 127/03, from November 24, a national company is deemed to be any company in which Angolan citizens hold the majority of the equity, these companies must also be registered with MIREMPET in order to be qualified to bid in public tenders. (Presidential Decree no. 82/18, of April 2nd, currently in force sets out the guidelines for the Bidding Rounds in the Angolan oil sector).

In order to take part in public tenders held by oil industry companies, privately held Angolan service providing companies must be owned by Angolan citizens, its social purpose must refer that the company is to provide services to the oil industry, updated the share capital in accordance with any new requirements set out by the MIREMPET and to be duly registered and certified with MIREMPET and the Chamber of Commerce and Industry of Angola.

Oil companies must set up public tenders to hire or sub hire companies (domestic or foreign). However, oil companies may contract directly (with no public tender associated), if the company demonstrates that the contracting was due to market inability or failure (*e.g.* service providing or providers selling that can only be contracted to a very limited number of companies). This direct contracting needs to be previously authorized by MIREMPET.

Domestic companies also benefit from preferential rights over foreign entities in public tenders set up by oil companies. Nevertheless, these preferential rights are not applicable if the exceeds more than 10% compared to offers proposed by other companies.

As a result, in order to acquire the necessary goods for carrying out their activities in Angola – power supplies, equipment, machinery and others – oil industry companies must give priority to hire preferably subcontract domestic companies, private and/or state owned, to provide support services to oil related activities. NOGBA, as the entity responsible for oil and gas exploration in Angola, needs to be provided with all the contracts and support documentation related with the contracting in the oil industry in Angola. The contracts will only be in force after communication is processed and the contract approved by NOGBA. These contracts will have to be registered with MIREMPET.

The abovementioned Dispatch 127/03, from November 24, must be construed in conjunction with the applicable Regime for Public Tenders within the Oil & Gas sector enacted in 2018, which provides that in all circumstances the operator has to comply with the competitiveness principle set out in Presidential Decree no. 82/18 of April 2nd.

Invitations should be sent by the operator to the pre-qualified entities contained in a general list of potential contractors for this purpose organized by MIREMPET and approved by the National Concessionaire (National Oil, Gas and Biofuels Agency "NOGBA"), based on approved Angolan Companies (owned over 50% by an Angolan person or entity).

The list shall be as comprehensive as possible in order to allow for the greatest possible degree of competition in the procedure.

This Decree also determines that MIREMPET shall draw up and keep up to date a list of Angolan entities supplying goods and services for petroleum operations, which must be consulted by the operators when conducting tendering procedures in connection with their activities.

Breach of the rules contained in Presidential Decree no. 82/18 of April 2nd renders the contracts entered into between the operator and the provider of goods and services null and void.

Since the Applicable Regime to Public Tenders within the Oil & Gas sector came into force, a few issues have been raised concerning the best approach to match this Regime on Public Tenders with the MIREMPET Dispatch mentioned above.

All contracting and subcontracting for the supply of goods and supporting services to the Oil & Gas sector is subject to the pre-emption rights held by state owned companies and private Angolan companies, provided that the respective price proposal does not exceed by more than 10% the price proposals of other companies. MIREMPET has the authority to supervise the compliance of the contracts with these rules (Article 27.3. of the Law n.º 10/04, of November 12th) and therefore the operators have to disclose to this Ministry the contracts entered into for the supply of goods and supporting services to the Oil & Gas activities.

Operators will therefore try to ensure successful tenderers meet as much as possible the tender requirements to avoid questions being raised subsequently or interference from MIREMPET.

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