

Democratic Republic of Congo

Relevant Laws

1. Democratic Republic of Congo: 2002 Mining Code – Loi N°18/001 DU 09 Mars 2018 Modifiant et complétant la Loi N°007/2002 du 11 Juillet 2002 portant code minier (« 2002 Mining Code as amended by the 2018 Law) minier
2. Democratic Republic of Congo: 2003 Mining Regulations – Decree No. 038/2003 of 26 March 2003 (2003 Mining Regulations) – The Regulations are in the process to be revised. Their current requirements are for now included.

Conditions for Competitive Bidding

The Democratic Republic of Congo uses a bidding system for mining and quarry rights relating to a deposit that has been studied, documented or possibly worked on by the state or its entities, and which is considered an asset with considerable known value (Article 33, 2002 Mining Code as amended by the 2018 Law). This implies that a bidding process is triggered for deposits for which the government has attained a certain level of geological information. When this condition has been satisfied, the Minister in charge of Mines and Quarries shall reserve rights for auction via the entry of a Ministerial Decree. Before doing so, the Minister shall consult with the provincial Minister of Mines and the concerned local communities through a consultation commission, whose terms should be fixed by regulations. This reservation of mining rights must be confirmed by the Prime Minister within 30 days following the entry of the Ministerial Decree (Article 33, 2002 Mining Code as amended by the 2018 Law).

Two-Tier Bidding – Pre-Qualification Criteria

The 2002 Mining Code as amended leaves open the possibility of two-tier bidding. While the law does not expressly provide for the conduct of a mandatory two-tier bidding system that entails a pre-qualification round for the preliminary selection of qualified bidders, the Congolese 2003 Mining Regulations provides that terms and conditions for a pre-qualification procedure may be set out in the *ad hoc* tender specifications drawn up for the particular mineral or quarry rights subject of the tender process (Article 48, 2003 Mining Regulations).

Bidding Process

In general, the bidding process may be conducted openly to all eligible bidders, through an invitation to bid published in the Official Gazette or in newspapers, or conducted on a limited basis, open only to mine or quarry operators identified by the relevant Minister and included in a short-list (Article 33, 2002 Mining Code as amended by the 2018 Law; Article 47, 2003 Mining Regulations). The bidding process over a particular set of reserved mineral or quarry rights is governed by tender specifications, drawn up on an *ad hoc* basis and approved by an inter-ministerial committee, which shall specify the following, among others: (1) the area of the reserved deposit, the nature and objects of the subject reserved rights, and the infrastructure and equipment subject to the tender process; (2) the nature and subject of the environmental rehabilitation obligations the bidder is expected to undertake; (3) the terms of access to on-site documentation and to the site proper for purposes of visits and the conduct of necessary studies; (4) the conditions of bidder eligibility and, as the case may be, the terms and conditions of a pre-qualification procedure; (5) the place and deadline for the submission of tenders; (6) the terms of admissibility and criteria for the examination of tenders; and (7) the terms and conditions for the opening of the tenders and the making of the eventual award to the successful bidder (Article 48, 2003 Mining Regulations).

Bids submitted in accordance with the terms and conditions of the invitation to tender are examined by an inter-ministerial committee in order to select the best bid on the basis of biddable factors (Article 33, 2002 Mining Code as amended by 2018 Mining Law). The call for tenders is made in accordance with the procedure laid out in the Congolese

legislation on public procurement and according to the international mining practice., within The conclusion of the bidding process needs to occur within 9 months of the entry of the Ministerial Decree reserving the deposits for mining rights subject to competitive bidding.

Biddable Factors/ Evaluation Criteria

- a. Plan of work proposed and related financial costs
- b. Available financial and technical capacity of the bidder
- c. Previous experience of the bidder in carrying out the operations proposed
- d. Various other socio-economic advantages for the state, the province, and the surrounding community including the signature bonus offered (Article 33, 2002 Mining Code as amended by 2018 Law).

Bidding Fee – Revenue/Buy-in

The 2002 Mining Code as amended by the 2018 Law and 2003 Mining Regulations do not expressly provide for the payment of a fee as a requirement for the submission of tenders. However, *ad hoc* tender specifications may only be obtained upon the payment of a fee, the amount of which shall be determined by an inter-ministerial decree (Article 48, 2003 Mining Regulations). Furthermore, once a successful bidder is chosen as a result of the process, such bidder shall pay the required surface fees within 30 days from the date of the award, in addition to the required signature bonus or fee (Article 62, 2003 Mining Regulations).

Eligibility

Articles 23 and 23 of the 2002 Mining Code as amended by the 2018 Law states that the following are eligible to obtain mining and quarry rights: (1) any individual of age who is a Congolese national, as well as any entity incorporated pursuant to Congolese law and which it has its registered administrative offices in the National Territory and whose corporate purpose is mining activities; (2) any individual of age of foreign nationality as well as any legal entity incorporated pursuant to foreign law; and (3) any entity carrying out a scientific activity. “In addition, legal entities wishing to invest in the mining sector are required to provide the following documents: 1) the tax certificate or equivalent, valid issued by the competent institution of the applicant's country of origin; 2) the certificate of good life and morals and the extract of the criminal record valid for the associates of the legal person, issued by the competent authorities of the country of origin; 3) the written commitment to declare in the Democratic Republic of Congo the profits and revenues realized.”

Foreign individuals and entities, and scientific entities are only eligible to obtain mineral and/or quarry prospecting rights. Natural or juridical persons who are insolvent or under receivership by virtue of a court order shall be ineligible to submit bids (Article 50, 2003 Mining Regulations).

Other Sources

1. <https://iclg.com/practice-areas/mining-laws-and-regulations/congo-d-r#chaptercontent2>
2002 Mining Code – Article 33 http://mines-rdc.cd/fr/documents/codeminier_eng.pdf