

# Liberia

## Relevant Laws

1. [Minerals and Mining Law, 2000 \(2000 Mining Law\)](#)
2. [2010 Amendment and Restatement of the Public Procurements and Concessions Act, 2005 \(2010 Amended PPCA\)](#)

## Conditions for Competitive Bidding

The 2010 Mineral Policy states that pursuant to the direction of the 2010 Amended PPCA, there will be “an open, transparent and competitive auction procedure for known mineral deposits” (Article 4, 2010 Mineral Policy). In Liberia, bidding is the standard unless the minister or ministry exercises discretion to opt out under certain specified circumstances. However, bidding procedures shall not be mandatory under the following circumstances: (1) for the grant of a concession in the form of a reconnaissance license, prospecting license, or an exploration license if the commission determines that there is insufficient information for a viable bidding process relating to the mineral in respect of the area over which the concession is to be granted; (2) for the issue of a mining license to the holder of an exploration license thus issued; and (3) for the grant of a class B or class C mining license where the commission, “upon the recommendation of the Minister responsible for mines and for stated reasons, so determines,” as well as for certain other reasons under law. (Section 95 (2-3), 2010 Amended PPCA).

Liberia makes a distinction between national and international competitive bidding. International competitive bidding must be used when one or more of the following conditions exist:

1. The project requires international expertise
2. The project requires technology not available in Liberia
3. The project requires capital outlay not ordinarily available in Liberia

In international competitive bidding, technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade and in particular shall conform to the provisions of the 2010 Amended PPCA. General and special conditions of contract, if specified, shall be of a kind internationally accepted in the relevant industry. (Section 97, 2010 Amended PPCA).

On the other hand, national competitive bidding may be used when conditions requiring international competitive bidding are not met and the inter-ministerial concessions committee has reasonably concluded that the project is so limited in scope that it is unlikely to be of interest to foreign investors. National competitive bidding must be used when it is concluded that the concession falls within an area of the economy that is by law restricted to Liberians, in which case only Liberian businesses may bid or participate in a bidding consortium (Section 96, 2010 Amended PPCA).

If the cabinet determines through consultation with the commission that sole source procurement is the only reasonable way of obtaining the resource controlled by the bidder and certain conditions apply, a concession may be granted on a sole source basis. These conditions include: (1) the concession requires specialized expertise that is available only to one specific bidder; (2) the concession involves an innovation the patent for which is held by one particular bidder; (3) the concession requires specialized research or experiment that only one person is prepared to undertake; or (4) the concession is in respect of strategic national interest or national defense or security and it is not in the national interest to have more than one bidder. (Section 101, 2010 Amended PPCA).

## Two-Tier Bidding – Pre-Qualification Criteria

Concession bidding shall entail a pre-qualification round unless it is determined by the relevant inter-ministerial concessions committee that it is highly likely only a small number of bidders will be interested. (Section 95(1), 2010 Amended PPCA).

Should pre-qualification be conducted, only bidders that have been pre-qualified shall be entitled to receive the invitation to bid and to submit bids. The concession entity may require prospective bidders to submit documentation verifying their qualification. All applicants who meet the minimum criteria for pre-qualification shall be invited to bid. (Section 102, 2010 Amended PPCA). Pre-qualification requirements shall be set forth either in specified documents or in the invitation to bid, request for quotation, request for proposal or related bidding documents. Only criteria stated in such documents shall be considered and will be applied equally to all bidders without discrimination. (Section 32, 2010 Amended PPCA).

Where pre-qualification proceedings are not conducted, post-qualification shall be used, in which the concession bid evaluation panel verifies the qualifications of the bidder selected for award against the criteria stated in the bid documents. (Section 102(5), 2010 Amended PPCA).

Pre-qualification criteria set by the procuring entity will normally include evidence of:

1. Professional and technical qualifications
2. Equipment availability where applicable
3. Past performance
4. After-sales service, where applicable
5. Spare-parts availability
6. Legal capacity
7. Financial resources and condition
8. Verification by internal revenue authority of payments of tax and social security contributions (Section 32(1), 2010 Amended PPCA)

## **Bidding Process**

A concession entity shall undertake public stakeholder consultation with respect to each proposed concession prior to the finalization of the bid documents to be included in the invitation to bid. (Section 90, 2010 Amended PPCA). In international competitive bidding, the concession entity shall publish a general notice of investment opportunity, a request for expressions of interest (unless pre-qualification is not required in the specific case) and the invitation to bid. Bidders shall be given at least 4 weeks to respond to the request for expressions of interest, and at least 6 weeks to respond to the invitation to bid. (Section 106, 2010 Amended PPCA). A pre-bid meeting may be organized to give prospective bidders the opportunity to clarify certain matters. All clarifications made during such pre-bid meeting shall be published. (Section 108, 2010 Amended PPCA). “In the case of two envelope bidding, the bid documents shall specify procedure for opening of the technical and financial envelopes.” (Section 110, 2010 Amended PPCA).

Evaluation of responses to pre-qualification requests or invitations to bid shall be undertaken by a concession bid evaluation panel that is appointed for each concession by the relevant inter-ministerial concessions committee. A concession bid evaluation panel shall establish its own rules of procedure, and shall act only through a majority vote of all its members. (Section 111, 2010 Amended PPCA). The concession bid evaluation panel shall seek to conclude evaluation and submit its report to the inter-ministerial concessions committee within the period set forth in bid documents. The period may be extended as necessary to enable a fair and comprehensive evaluation of the bids submitted, with notice to all bidders. (Section 115, 2010 Amended PPCA). The evaluation report shall include a recommendation that the bidder with the highest overall score (above any minimum level required to qualify) be invited for negotiations. (Section 115, 2010 Amended PPCA). A due diligence evaluation is then performed within fourteen (14) days after notice of approval of the evaluation report by the inter-ministerial concessions committee. Thereafter, the president shall appoint a negotiation team for the conduct of the negotiations with the highest ranked bidder. (Section 118(5), 2010 Amended PPCA).

The law prefers concession bids to be structured in such a way that the terms of the bids: (1) include a definitive agreement; and (2) require the successful bidder to enter into a definitive agreement following the identification of a successful bidder. The concession entity may give pre-qualified bidders the opportunity to comment on the proposed form of agreement before the bid documents are finalized and released to the bidders. (Section 75(4), 2010 Amended PPCA).

A concession bidder, by its bid, is deemed to have accepted the terms and conditions expressly set forth in the bid documents. A bidder shall be disqualified if, when invited to negotiations, it seeks changes in terms and conditions expressly set forth. In such a case, the government may seek to enter into an agreement with the next highest evaluated bidder or may cancel the bid or postpone the project altogether. (Section 75(5), 2010 Amended PPCA).

### **Biddable Factors/ Evaluation Criteria**

Minimum contents of evaluation criteria:

1. Pre-qualification evaluation criteria take into consideration the particular requirements of the proposed concession and the nature of the expertise required for the efficient and effective implementation of the concession
2. Evaluation criteria for invitation to bid:
  - a. Compliance of the bidder with any specific technical and financial requirements stated in the bid documents (including bid security)
  - b. Technical and financial capacity of the bidder to carry out all phases of the proposed project
  - c. Technical feasibility of the proposal
  - d. Effectiveness of the methods and resources to be deployed
  - e. Extent to which the proposed concession contributes to the realization of the National Development Plan
  - f. Technology transfer
  - g. Impact on the environment and compliance with environmental laws and regulations
  - h. Expected effect of the concession on national income, employment of Liberians, the communities affected by concessions (social impact considerations), industries and other sectors of the economy
  - i. Direct financial benefits flowing to the government from the award of the concession
  - j. Negative impacts on Government revenues of any financial concessions proposed to be granted.
  - k. Any margin of preference applicable in accordance with Section 99 of PPCA (Section 113, 2010 Amended PPCA)
    - i. The bidding documents shall require bidders to present the financial components of their bids in the currency specified in the bid documents. (Section 95, 2010 Amended PPCA)

#### *Margin of Preference:*

The Liberian legislation refers to a “margin of preference” that the concession bid evaluation panel may grant to an otherwise technically and financially qualified domestic business or Liberian business. ( Section 99, 2010 Amended PPCA). The margin of preference would give that bidder an edge over others with similar specifications. A margin of preference for concessions may also be granted to the bidder who (1) commits in its bid to utilize the highest percentage of goods manufactured in Liberia and services delivered by persons resident in Liberia in excess of a threshold that may vary by industry, and (2) sets forth in its bid reasonable ways for assuring performance of its commitment. Any such regulation shall set forth a realistic program for policing such commitments, and shall provide appropriate penalties for non-compliance, including, in severe cases, an obligation to rebate to the government the amount of the price preference granted. Such preference must be approved by committee of the statutory members of each inter-ministerial concessions committee. (Section 99, 2010 Amended PPCA).

#### *Prohibited Criteria in Evaluation:*

The criteria for the selection of responsive bidders shall not at any stage include any of the following (provided that criteria (b) and (c) stated below shall not be applied to limit the ability of the concession bid evaluation panel to apply in good faith criteria reasonably designed to require actions by concession holders to minimize adverse environmental impacts of proposed concessions, to mitigate the adverse social impact of concessions, and to improve the quality of life in the communities affected by their operations):

- a. Criteria that cannot be reasonably interpreted as a condition meant to elicit the attainment of any of the principles provided for under the 2010 Amended PPCA;

- b. Criteria that are non-commercial in character and which will not lead to the attainment of the objectives of the concession arrangement;
- c. Ambiguous criteria the interpretation of which can be subjective;
- d. A criterion or condition that leads to the grant of the concession to particular persons or group of persons;
- e. A criterion or condition designed to facilitate the selection of a known bidder in contravention of the competitive process; and
- f. A criterion or condition that will promote the corruption of the entire or part of the concession procurement process (Section 114, 2010 Amended PPCA).

### **Bidding Fee – Revenue/Buy-In**

The Liberian legislation refers to fees collected from prospective bidders in connection with a request of expressions of interest or invitation to bid as going towards the cost of due diligence “to the extent not borne by the bidders. (Section 116 (8), 2010 Amended PPCA). There is no further information available on fees related to bidding.

### **Eligibility**

The holder of a concession must be a corporation organized under the Business Corporation Act, Part I of Title 5 of the Liberian Codes Revised, Vol. II or under any successor Liberian law providing for the organization of for-profit corporations, provided that a concession with respect to mineral or agricultural natural resources may be held by a cooperative association of individuals if: (1) the association is organized under law or regulations providing that the association has continuity of life independent of changes in its membership; (2) at least 80% of the voting and economic interests in the association are legally and beneficially owned by citizens of Liberia; and (3) such form of ownership is otherwise permitted by applicable law and regulations. (Section 86, 2010 Amended PPCA).

### **Other Sources**

1. [Mineral Policy of Liberia March 2010 \(2010 Mineral Policy\)](#)