

GOVERNMENT OF THE REPUBLIC OF SERBIA
MINISTRY OF ECONOMY AND PRIVATIZATION

Based on article 33. of the Law on Privatization ("Official Gazette of the Republic of Serbia" no. 38/2001), the Government of the Republic of Serbia introduces:

Decree on sale of capital and property by public tender

- Introductory provisions
- Preparation for tender sale
- Submission and receipt of offers
- Opening and evaluation of offers
- Tenders with one participant
- Execution of sale contract

I INTRODUCTORY PROVISIONS

Article 1

This decree regulates the procedure and method of sale of socially and state-owned capital and property in enterprises to be privatized by means of public tender (hereinafter: tender) in accordance with the stipulated procedure, conditions and criteria in which offers are publicly opened, evaluated, accepted or rejected.

Socially or state-owned capital or property (hereinafter: capital), referred to in paragraph 1 of this article, is expressed in the nominal value, and in the percentage share of this capital in the total value of capital in the enterprise to be privatized.

Article 2

Tender is organized and conducted by the Agency for Privatization (hereinafter: Agency) in accordance with law and this decree.

The Agency can, based on a special tender or on an invitation, engage advisors for the conduct of its operations, and for the support in organizing tenders and in the selection of the best bidder. An individual employed by the Agency, who has ownership rights in enterprises to be privatized, the capital or property of which is subject of tender sale, or who participates in a tender, his/her relative up to the third kin in a straight line who participates in a tender, cannot be engaged in such a tender.

Article 3

The Tender Commission (hereinafter: Commission), which is formed by the minister in charge of privatization affairs in accordance with law, monitors the conduct of tenders and, based on the proposal by the Agency, approves the tender results.

Three representatives of the government of the Republic of Serbia are appointed to the Commission, one representative of the local authority in which the seat of the entity being privatized is situated, and one representative of the entity to be privatized itself.

The Chairman of the Commission is appointed from the ranks of the government members of the Commission.

The Commission makes decisions by majority votes from the total number of its members.

An individual who has ownership rights in enterprises to be privatized, the capital or property of which is the subject of tender sale, or who participates in tender, his/her relative up to the third kin in a straight line, who participates in a tender, cannot be a member of the Commission

II PREPARATION FOR TENDER SALE

Article 4

Tender sale encompasses:

- 1) Sale preparation,
- 2) Submission and receipt of offers,
- 3) Opening and evaluation of offers,
- 4) Contracting the sale.

Article 5

Sale preparation encompasses:

- 1) Preparation of tender documentation,
- 2) Announcement of public invitation for the submission of offers for participating in a tender.

Article 6

Tender documentation consists of:

- 1) Confidentiality agreement (contract on the protection of confidential information),
- 2) Information Memorandum on the entity being privatized, consisting of: name and address of the entity, description of its main operations, its organizational and ownership structure, the total bookkeeping value of its capital or property expressed in Dinars and its EURO equivalent, business operations data, and the credit-worthiness of the entity,
- 3) The conditions and deadlines for the participation in a tender, description of procedure for the conduct of tender, conditions for composing of a comprehensive analysis of the entity's business operations (due diligence), time and manner of visiting the entity to be privatized, criteria for the ranking of offers, a copy of this decree,
- 4) Draft of sales contract,
- 5) Other information and documentation, as necessary for the tender sale.

The Agency determines the conditions for participation in a tender, and the criteria for the ranking of offers, which must be time-specified, as well as defined in terms of value, quality and technical matters.

Article 7

The Agency announces public invitation to participation in a tender after the completion of tender documentation referred to in article 6 of this decree.

Public invitation from paragraph 1 of this article consist of:

- 1) Name, address and other basic information on the subject of privatization (i.e. telephone number, fax number, etc.),
- 2) Description of its main operations,
- 3) Percentage of capital, and/or description of property being offered for sale,
- 4) Dates and deadlines for participation in tender,
- 5) Tender code,
- 6) Name of contact person, in charge of providing more detailed information,
- 7) Other information of importance to the participation in tender.

The Agency announces the public invitation from paragraph 1 of this article in the public media, at least in one daily newspaper and on the Internet, and for the significantly more important subjects of privatization also in the foreign press, as and when the Agency so evaluates as appropriate.

The costs of announcement from paragraph 1 of this article are for the account of the subject of privatization in accordance with law.

Article 8

Tender documentation is sold to individuals and legal entities, which express their interest in participating in a tender (hereinafter: tender participants) at the price determined by the minister in charge of privatization affairs.

Tender participants are obliged to sign the confidentiality agreement from article 6, point 1, of this decree, prior to receiving the tender documentation.

III SUBMISSION AND RECEIPT OF OFFERS

Article 9

Offers to the tender are to be submitted on the basis of the public invitation and the tender documentation.

Submission of offer shall be deemed as acceptance of the tender conditions, and/or the terms of contract from article 6, point 4, of this decree. Submission of offer shall include the price offered for the subject of privatization.

The Agency can demand the report by an independent auditor on the conducted audit of tender participants' accounting statements.

Article 10

Date of announcing the public invitation shall be deemed as the starting date of tender.

Offers are submitted to the Agency within the deadline stipulated in the public invitation, which cannot be shorter than 15 days from the date of announcing the public invitation.

Date of submission of offer to the post office shall be deemed as the date of its submission to the Agency, if the offer is submitted by post.

The offer can be withdrawn by a written request no later than seven days before the expiry of deadline from paragraph 2. of this article.

In the case described in paragraph 4. of this article, the bidder is entitled to the refund of deposit within five days from the date on which the written request for withdrawal is received.

Article 11

The original of the offer, and copies, are submitted directly to the Agency or by recorded mail in closed envelopes.

The original of the offer is to be submitted in an envelope marked as "original".

Copies of the original offer, documentation for the identification of tender participants, original of the evidence for the effected payment of deposit, the account number for the refund of deposit in case of the offer's rejection, are to be submitted in an envelope marked as "corresponding documentation".

The envelopes from paragraphs 2. and 3. of this article are to be submitted together in one envelope.

All envelopes must have the name of tender participant, be addressed and sealed, bear the tender code and the warning that they cannot be opened before the deadline stated in the public announcement from article 7. of this decree.

Article 12

The identification documents for individuals from article 11. paragraph 3. of this decree are authenticated copies of the personal identity card or passport, and authenticated copies of registration documents for legal entities.

The identification documents for an authorized representative of a legal entity are the authorization and authenticated copy of identity card or passport.

Article 13

The Bidder pays a deposit.

The deposit is paid in money and in the manner stipulated in the public invitation.

Article 14

The Agency determines the procedure for the receipt of offers, method of keeping the records of received offers, as well as the safe-keeping of documentation.

IV. OPENING AND EVALUATION OF OFFERS

Article 15

The tender participants shall be informed on a timely basis about the place and time of opening of offers.

The Agency, with the presence of the Commission, opens the offers, determines their timely submission, and their completeness in accordance with article 11, paragraph 3. of this decree.

The Tender participants, their representatives or authorized legal representatives can be present at the opening of offers.

Untimely and incomplete offers will not be considered and the Commission shall inform the tender participant to this effect within five days from the date of the opening of offers.

Article 16

After the conclusion of the public opening of offers, the Agency evaluates the offers within 30 days from the date of the opening of offers.

The evaluation of offers and the announcement of the results of tender are also carried out when only one offer is submitted.

Offers, for which the Agency determines are not fulfilling of the conditions of tender, shall be deemed invalid and the tender participant will be informed to this effect in writing within three days from the expiry of deadline stipulated in paragraph 1. of this article.

If the Agency determines that none of the offers fulfill the criteria and conditions of the tender, the tender is declared unsuccessful and this declaration is publicly announced.

The Commission approves the decisions of the Agency referred to in paragraphs 3. and 4. of this article.

Article 17

If an offer is voided or is rejected, the deposit is refunded to the tender participant within seven days from the date of the signing of sale contract, or within maximum of 45 days from the expiry of deadline referred to in article 16, paragraph 3. of this decree.

The costs of the refund of deposit are for the account of the bidder.

No interest shall be calculated for deposits refunded on a timely basis.

Interest shall be paid for deposits refunded after the deadline, only for the days exceeding the deadline expiry date, in accordance with the applicable law determining the rate of such interest.

Article 18

The Agency determines the rankings of valid offers by applying the stipulated criteria (hereinafter: tender list).

The best offer is ranked first on the tender list.

The Commission, upon the Agency's proposal, approves the results of tender.

Article 19

Within three days from the date of the decision referred to in article 18, paragraph 3. of this decree, the Agency shall inform in writing all the ranked tender participants about the results of the tender. The Agency shall send an invitation to highest ranked tender participant to execute the sale contract with the tender participant as the buyer.

V. TENDERS WITH ONE PARTICIPANT

Article 20

In case of only one participant responding to a tender, whose offer is determined by the Agency as fulfilling of conditions and criteria of the tender, the Commission can, upon the Agency's proposal, decide to repeat the tender or sell the capital to the tender participant.

Article 21

The minister in charge of privatization affairs appoints the commission for the negotiations with the tender participant from article 20. of this decree.

The number of negotiating commission's members is determined for each negotiation separately.

The negotiating commission is authorized to:

- 1) conduct negotiations with the tender participant, and
- 2) record and sign minutes from such negotiation.

The negotiating commission makes decisions by majority voting.

The limitations from article 3, paragraph 4. of this decree apply equally on the membership in commission referred to by paragraph 1. of this article.

VI EXECUTION OF SALE CONTRACT

Article 22

The Agency, entity being privatized and the buyer execute the sale contract within 30 days from the date of the expiry of deadline referred to in article 19. of this decree.

Article 23

The buyer is entitled to ownership rights upon the effected payment of the entire amount of contractual price less the amount of deposit in a manner and within the deadline stipulated in the tender documentation and the sale contract (hereinafter: contract).

Article 24

Should the tender participant, whose offer was declared the best, not sign the offered contract within the stipulated time period, it will be considered that such tender participant withdrew from purchase.

In the case referred to in paragraph 1. of this article, the Agency shall invite the next most highly ranked tender participant from the tender list to execute the contract.

If the two most highly ranked tender participants do not accept the signing of the contract the Agency shall determine further course of action in co-operation with the Ministry.

If the tender participants referred to by paragraphs 1. and 3. of this article do not execute the sale contract or fail to effect the payment of the contractual price within the contracted deadline, such tender participants forfeits the entitlement to the refund of deposit.

Article 25

The tender participants are entitled to object to the legality of the conduct of tender procedure.

The objection referred to in paragraph 1. of this article is to be submitted to the ministry in charge of privatization affairs (hereinafter: the Ministry) within eight days from the date of receipt of tender results notification.

The Ministry decides on the objection within eight days from the date of receipt of such objection.

Article 26

The Agency shall keep in its archive the documentation on tenders for the period of at least three years from the date of execution of contract.

Article 27

This decree comes into force on the next day following the day of its publication in the "Official Gazette of the Republic of Serbia".