



REPUBLIC OF ANGOLA

TERMS OF REFERENCE (ToR)

PUBLIC TENDER NO. 03/2024

VIA ELECTRONIC AUCTION

SALE OF 39 HOTEL BUILDINGS OF THE IU, IKA and BINA chain

Luanda, March 2024

DISCLAIMER

THIS TRANSLATION IS INTENDED TO HELP THE PRIMARY ANALYSIS OF INTERNATIONAL INVESTORS AND DOES NOT MAKE IT DISPENSABLE TO CONSULT THE PORTUGUESE AND OFFICIAL VERSION OF THE TENDERS, WHICH, IN CASE OF DIFFERENCE, PREVAILS OVER IT'S TRANSLATION

Unofficial translation

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1. Definitions

1.1. The following words and expressions have the meaning given to them in this clause, unless the context dictates otherwise, the following definitions shall apply:

- a) '*Public Contracting Entity* (PCE) – the Entity Responsible for Privatisation, which corresponds to the Ministry of Finance (MINFIN), through the Instituto de Gestão de Activos e Participações do Estado (IGAPE), pursuant to Presidential Decree No. 19/24, of 11th of January, in conjunction with Decree No. 3011/24, of 15th of March, of the Minister of Finance, with the following contacts and address:
- Email: leilaoelectronico@igape.co.ao;
 - Phone: +244 926 334 211;
 - Address: Major Kanhangulo Street, IMOB BUSINESS TOWER, 3rd floor, Luanda;
 - Website: (URL): www.igape.minfin.gov.ao.
- b) '*Contracting Authority*' means the entity responsible for alienation of the hotel buildings, the Ministry of Finance, through IGAPE;
- c) '*Successful tenderer*' means the individual or collective legal person to whom PCE awards the hotel building on the basis of the criterion – highest bid value;
- d) «*Contract*» means the agreement signed between the Contracting Authority and the Contractor, which stipulates the conditions and obligations between both parties for the sale of the hotel building.

2. Purpose of Privatization

2.1. This document establishes the general terms and conditions of the Public Tender via Electronic Auction (EA), for the privatization of 39 Hotel Buildings of the IU, IKA and BINA chain, namely:

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|--------------------------------|-------------------------------------|-------------------------------------|
| a) Hotel IKA Caxito; | n) Hotel IU Cuito - Tower A; | aa) Hotel IU Santa Clara - Tower B; |
| b) Hotel IKA Lubango; | o) Hotel IU Dundo - Tower A; | bb) Hotel IU Santa Clara - Tower C; |
| c) Hotel IKA Luena; | p) Hotel IU Huambo - Tower A; | cc) Hotel IU Saurimo - Tower A; |
| d) Hotel IKA Malanje; | q) Hotel IU Lobito - Tower A; | dd) Hotel IU Soyo - Tower A; |
| e) Hotel IKA Mbanza Congo; | r) Hotel IU Lobito - Tower B; | ee) Hotel IU Soyo - Tower B; |
| f) Hotel IKA Ndalatando; | s) Hotel IU Lobito - Tower C; | ff) Hotel IU Soyo - Tower C; |
| g) Hotel IKA Ondjiva; | t) Hotel IU Lubango - Tower A; | gg) Hotel IU Sumbe - Tower A; |
| h) Hotel IKA Soyo; | u) Hotel IU Luena - Tower A; | hh) Hotel IU Talatona - Tower A; |
| i) Hotel IKA Talatona; | v) Hotel IU Malanje - Tower A; | ii) Hotel IU Tômbua - Tower A; |
| j) Hotel IKA Uíge; | w) Hotel IU Mbanza Congo - Tower A; | jj) Hotel IU Uíge - Tower A; |
| k) Hotel BINA Soyo; | x) Hotel IU Moçamedes - Tower A; | kk) Hotel IU Viana - Tower A; |
| l) Hotel IU Caxito - Tower A; | y) Hotel IU Ndalatando - Tower A; | ll) Hotel IU Viana - Tower B; |
| m) Hotel IU Cacuaco - Tower A; | z) Hotel IU Santa Clara - Tower A; | mm) Hotel IU Viana - Tower C; |

2.2. This document also considers the clauses to be included in the Contracts to be signed, following the award as a result of the auction, regarding, the autonomous sale of the buildings hotels identified above.

2.3. The sale of the object of the contract will be established under a privatization regime, in the form of sale of assets, free of any liabilities, encumbrances or charges.

- 2.4. The Hotel Buildings will be sold in the state of conservation and condition in which they are, with the technical and material characteristics contained in the Technical Information Document, attached to these Terms of Reference, assuming that they have been previously examined by the successful tenderers, and therefore no subsequent claim is made about them as to their intrinsic or extrinsic condition.
- 2.5. Interested parties may request, by appointment and during the period granted by IGAPE, access to the Hotel Buildings subject to this procedure, and should be aware of the conditions that influence the way in which it is carried out, in order to realize the recognition and surveys necessary for the proper assessment of the quality of the asset, agreeing to them, and not being able to subsequently claim any errors and/or omissions, not foreseen by it.
- 2.6. The referred request should be sent through : leilaoelectronico@igape.co.ao.

3. Applicable Legal Regime

- 3.1. This procedure is governed by the provisions of these Terms of Reference and their respective annexes, as well as by any documents on clarifications and rectifications that may be provided and made, which form or will form an integral part of these Terms.
- 3.2. To everything that is not specifically provided for in these Terms of Reference and in the respective annexes, it is applicable the regime provided for in Law No. 10/19, of 14 May, Basic Law on Privatizations, in Law No. 41/20 of 23 December, Public Procurement Law and other subsidiary regimes.

4. Competitors or Association of Competitors

- 4.1. The Electronic Auction is derigged to any association or grouping, all legal and individual persons, national or foreign, who meet the minimum requirements in these Terms of Reference, and who are not in any of the impediment situations referred to in Articles 56th and 57th of the Public Procurement Law.
- 4.2. The following are barred from applying:
 - 4.2.1. Entities withdrawing from awards in previous privatization processes.
 - 4.2.2. Entities (contractors) in breach of contract in previous privatization processes, including companies with which they establish any corporate group relationships or long-term trade association.
- 4.3. Associations or groups of legal and individual persons may compete in this Auction, without any legal modality of association between them, under a joint and several liability.
- 4.4. Members of an association or group of competitors may not, on their own or as part of another competing association, compete in the same procedure.
- 4.5. All members of an association or group of competitors must, cumulatively, assume joint and several liability before the Contracting Public Entity for the maintenance of the relationship effected with the bidding process and, for the fulfilment of all obligations relating to the procedure, the award, the conclusion, and the execution of the contract.
- 4.6. The entities that make up the association or grouping must appoint a representative to carry out any acts relating to this procedure, including the signing of the Contract, and for this purpose, deliver mandate instruments issued to each of its component entities.

5. Admission of Foreign Competitors

- 5.1. May apply for this procedure, or be part of any association or group, any legal foreign person, individual or collective, which are not part of the impediment situations referred to in the previous paragraph.

6. Accredited Representatives

- 6.1. Each Competitor or each Association or Group of Competitors may have up to 2 (two) Accredited Representatives.

- 6.2. Proof of representation eligibility shall take place:

6.2.1. In the case of Bidders that are Angolan companies, by means of a power of attorney instrument that proves powers to perform, on behalf of the Bidder, all acts related to the Contest (including the powers to receive summons, represent the Contestant administratively and judicially, make agreements and waive rights).

6.2.2. In the case of Competitors in Association or Group of Competitors, the letter of attorney instrument mentioned in the previous item must be granted by the Leading Company.

6.2.2.1. Powers of attorney granted by associates to the Leading Company, granting it expresses, irrevocable powers to agree to conditions, compromise, and sign any papers, documents and contracting instruments related to the Tender.

6.2.2.2. Documents proving the powers of all grantors (according to the last amendment filed in the competent business or civil registry entity).

- 6.2.3. In the case of a foreign company alone, upon presentation of:

6.2.3.1. Sufficient legal instrument or power of attorney granted to a representative resident in Angola, which proves powers to:

- i. Perform, on behalf of the Competitor or the Company, all acts related to the Tender.
- ii. Receive summons and represent the Competitor administratively and judicially.
- iii. Make agreements and waive rights.

6.2.3.2. Documents proving the powers of the grantors, with the signature(s) duly authenticated as true by a notary or other entity in accordance with the legislation applicable to the documents, recognized by the Angolan consular representation, observed, when applicable, duly translated into Portuguese.

- 6.3. Each Accredited Representative may only represent a single Competitor.

7. Clarifications and rectification of the Terms of Reference

- 7.1. The clarifications necessary for the proper understanding and interpretation of the terms related to this procedure may be requested by the interested parties in writing, up to 10 (ten) days in advance the deadline for submission of documents.

- 7.2. On its own initiative, the Public Contracting Entity (PCE) may rectify errors or pronounce on omissions in the documents of the procedure by the date set out in the previous paragraph.

8. Documents and Deadline for submission of Applications

- 8.1. The Application documents must be properly scanned in PDF format and have a size of up to 2 MB.
- 8.1.1. The Application documents must be uploaded to the Electronic Auction Platform (EAP) at the time of application.
- 8.1.2. The list of required qualification documents can be viewed in the EAP, with each document fitting in a specific tab, corresponding to the upload;
- 8.1.3. The qualification documents to be presented are as follows:
- 8.1.3.1. For legal persons:
- i. Commercial Registry and deed of incorporation.
 - ii. Certified Social Security Contributory Certificate;
 - iii. Tax Compliance Certificate;
 - iv. Annual Report of the last 3 financial years, submitted to the AGT (Tax Entity);
 - v. Analytical General Balance Sheet for the 1st Semester of the current financial year;
 - vi. If the application is submitted by an association, the power of attorney issued and signed by each of its members must be presented.
- 8.1.3.2. For individual persons:
- i. Identity Card;
 - ii. Declaration of Suitability, issued by a commercial bank;
- 8.2. All documents must be written in Portuguese or, if they are not, they must be accompanied by a duly legalized translation in relation to which the candidate declares that he accepts the predominance over the originals.
- 8.3. Before accessing the Tender and submitting the application, the contestant is automatically required to accept the Terms of Reference, so the contestant must ensure that the contestant reads and acceptance of the same in order to obtain permission to participate in the auction.
- 8.4. The application documents must be submitted in Portuguese or, if not, they must be accompanied by a duly legalized translation in relation to which the applicant declares that he accepts the predominance over the originals.
- 8.5. The Applications should be made, until To 2:59 p.m. day 14 from May 2024, being the period for the effect properly timed on the Electronic Auction Platform (EAP), whose link from access It's the following:
<https://leilaoigape.minfin.gov.ao/>.
- 8.6. The EAP does not allow the submission of documents beyond the deadline set for this purpose.
- 8.7. For the purposes of registration and application, the competitor must follow the steps referenced in this document and provided for in the User Manual.

9. Form and Mode of Presentation of the Bid Value

- 9.1. The bid is submitted by bidding on the Electronic Auction Platform (EAP) from the date and time of the opening of the Auction Session.
- 9.2. Bidding must be made within the properly timed Session, counting down, for this purpose.

9.2.1. The first bid must be higher than the base bid price and subsequent bids must necessarily be higher than the last bid, and bids will not be considered of a value less than or equal to the previous one.

9.3. During the period in which the session is open for bidding, the competitor can make the desired number of bids as long as he complies with the rules in the previous numbers.

10. Deadline for Maintenance of the Effective Bond with the Bidding

10.1. Bidders are obliged to maintain the pre-contractual relationship, after bidding in an Electronic Auction Session, for a period of 60 (sixty) days from the date of notification.

11. Organization and Bidding in Electronic Auction Session

11.1. The Electronic Auction Session will take place from 00:00 on May 16, 2024 until 13:59 on the same day.

11.2. Once the auction session opens, the bidder will be able to bid for the acquisition of the Hotel Building for which he or she has applied.

11.3. The bidding is Governed by these Terms of Reference and Occurs under monitoring of the Negotiating Committee, which will provide everyone the clarification needed, by via e-mail: leilaoelectronico@igape.co.ao.

11.4. During the period in which the bidding session is open, the competitor may make the desired number of bids, and may not submit a bid lower than his last bid, otherwise this last move will be considered as final.

11.5. At the end of the open period for bids, they will be automatically ordered by means of the criterion of the highest final bid value among the competitors, and in case of equal finals will only be considered the bid that has been registered first by the platform.

11.6. The Trading Committee is limited to:

11.6.1. To carry out the formal analysis of the Application documents, which qualify the bidders for the bidding session; and

11.6.2. Waiting for the final report automatically produced by Electronic Auction Platform (EAP) for the preparation of the Preliminary Auction Report.

12. Non-Admission and Conditional Admission of Competitors

12.1. Applicants who, at the time of their application, do not upload one or more Documents, including the qualification documents listed in the EAP, are not admitted.

12.2. Applicants who present qualification documents issued by foreign authorities that are not yet recognized by the Angolan Consulate in the country are conditionally admitted the issuance of these documents.

13. Award Criteria

13.1. The assets, subject to the sale, will be awarded according to the sole criterion of the highest value of the final bid.

13.2. In case of equal final bid values, only the value of the first bid recorded by the platform is considered.

14. Preliminary Bidding Report

- 14.1. After the end of the bidding session, the Negotiation Committee prepares a Preliminary Auction Report, based on the report automatically generated by the EAP.
- 14.2. The automatic notification made by EAP to the successful bidder that made the last bid is not considered as a Preliminary Bidding Report.
- 14.3. In the preliminary report, the Negotiating Committee may also propose the exclusion of bidders for reasons provided for in Article 81 of the Public Procurement Act.

15. Preliminary Hearing

- 15.1. Once the preliminary report has been prepared, the Negotiating Committee sends it to all candidates so that they can comment in writing on the content of the document, within 5 days from the date of the receipt of the summons, pursuant to the right to a prior hearing.

16. Final Report

- 16.1. Once the provisions of the previous paragraph have been complied with, the Negotiation Committee prepares a reasoned Final Report, in which it proposes the award, and may also propose the exclusion of any bidding, if it is verified any cause of exclusion.

17. Publication of Documents

- 17.1 The Negotiation Committee will make public the qualification documents of the winning bidders only.

18. Causes of Non-Award

- 18.1. There is no award when one or more of the situations provided for in Article 98 of the Public Procurement Law occur.
- 18.2. There shall be no award if the successful bidders in the auction of the assets do not provide the security deposit provided for in paragraph 28.
- 18.3. If the best-ranked bidder does not provide the security deposit within the deadline set, the bidder with the second highest final bid will assume the position of Contractor, provided that he/she also complies with the provisions in paragraph 28.

19. Expiry of Award

- 19.1. The Award expires when, for a reason attributable to it, the Successful Tenderer:
 - 19.1.1. Fails to provide the final security deposit in time and under the terms required in these Terms of Reference;
 - 19.1.2. Do not appear on the day, time and place set for the granting of the contract;
 - 19.1.3. In the event that the successful tenderer is an association, if its members have not joined in accordance with number 4 of Article 55th of the Public Procurement Act.

19.2. In the cases provided for in the previous paragraphs, the successful tenderer loses the security deposit provided in favour of the contracting public entity, and the Negotiation Committee must award to the tenderer, whose bid amount is ordered in the immediately preceding place.

20. Administrative Resources

20.1. Bidders participating in the Auction may appeal the analysis and judgment of the documents contained in the Final Report of the Award decision.

20.2. The time for filing an appeal will be after the decision declaring the successful tenderer, where the bidders will be able to appeal the decision rendered to the highest body of IGAPE.

20.3. The appeals referred to in this paragraph must be filed within 5 (five) working days from the date of publication of the decision.

21. Risk Regime

21.1. The successful tenderer assumes full and exclusive responsibility for the risks inherent in the sale.

21.2. The successful bidder must ensure, within 1 (one) month after the actual delivery of the Hotel Building, the existence and maintenance in force within 1 (one) year, and Multi-risk insurance policies necessary to ensure effective and comprehensive coverage of any risks that diminish the value of the asset, issued by licensed insurers by the governing body.

21.3. The Contracting Public Entity must be indicated as a co-beneficiary of the contracted insurance policies until the full value of the asset has been paid.

21.4. It is strictly the contractor's obligation to maintain the contracted insurance policies in force, namely through the timely payment of the respective premiums.

22. Draft Promissory Contract

22.1. The Contracting Public Entity must approve the draft of the Promissory Contract of Purchase and Sale and submit it to the successful tenderer, the content of which must be in accordance with the provisions of the Article 108 of the Public Procurement Act.

22.2. The Successful Bidder must comment on the draft of the promissory contract within 5 (five) working days after its receipt, silence being equivalent to tacit acceptance.

22.3. Complaints against the draft contract are admissible when it contains obligations not contained in the documents on which this procedure is based.

22.4. In the event of a complaint, the Contracting Public Entity must provide clarifications within 5 (five) days from the date of receipt of the complaint.

23. Execution and Granting of the Written Agreement

23.1. The promissory contract underlying this procedure consists of the respective contractual clauses and is concluded in writing.

23.2. The costs and charges inherent in the reduction of the contract to writing are the responsibility of the successful tenderer.

23.3. The following elements are included in the contract:

- a) Clarifications and rectifications to the Terms of Reference, provided by the Body Responsible for the privatization;
- b) The Terms of Reference; and
- c) The Final Report prepared by the Commission.

23.4. The promissory contract must be signed within a maximum period of 15 (fifteen) working days, counted from the date of acceptance of the respective draft or decision on the claim of the draft contract, and must be notified of the day, date, time and place of the grant of the Agreement.

23.5. In the event of a discrepancy between the documents referred to in paragraph 24.3 of this clause and the clauses of the Agreement, the former shall prevail.

24. Obligations of the Contracting Authority

8.2. For the sale of the object of the Contract, the Contracting Authority has the following obligations:

- a) Execute the Promissory Contract of purchase and sale;
- b) Make the asset available to the contractor, as well as all relevant documentation and information related to the construction and legalization of the building.
- c) Ensure with the competent bodies the execution of the public deed of purchase and sale of the asset subject to the procedure, within a period not exceeding 3 (three) months after payment the full amount of the financial contribution, exceptionally extendable for the same period;
- d) Be available to provide clarifications related to the operational activity of the privatized asset.

25. Obligations of the Contractor

25.1. Without prejudice to other obligations provided for in the applicable legislation, in these Terms of Reference or in the contractual clauses, the conclusion of the contract shall result in the obligations defined for the Successful Tendering the parts of the present procedure.

25.2. The contractor also has the following obligations:

- a) provide a security in the manner provided for in paragraph 27;
- b) Payment of the Financial Contribution provided for in paragraph 26 of these Terms of Reference;
- c) Presentation of a multi-risk insurance in the mold predicted for in paragraph 21;
- d) To pay any taxes, fees, duties of any kind or other charges required by the competent authorities in connection with the performance of the Contract;
- e) Promote the development and operation of the Hotel Building in accordance with the legislation in force.
- f) Maintain the required workforce according to the operational needs of the Hotel Building and its activity, for a period of not less than one year, not assuming by this any compensation and/or compensation to

be paid to the current employees of the building if related to employment relationships prior to privatization;

- g) To grant the right of first preference to the current employees of the contracted Hotel Building, during the future recruitment and selection process of the staff, if they do not immediately resume the exploitation of the asset;
- h) Comply with all applicable legislation.

26. Financial Contribution

26.1. For the privatization of the subject matter of this procedure, the Successful Tenderer will pay the Contracting Authority a financial contribution, corresponding to the amount bid in the Auction.

27. Bail

27.1. In order to ensure the exact and punctual fulfilment of the obligations that the successful tenderer assumes with the conclusion of the promissory contract, the contractor must provide a security aimed at least at the cover of 15% of the value of the bid, and the PCE may resort to it, without the need for a prior judicial or arbitration decision to satisfy any amounts that may be due for non-fulfillment, or defective fulfillment, of said obligations.

27.2. The Successful Bidder must provide a definitive guarantee within a maximum period of 10 (ten) days from the date of notification of the content of the Final Report.

27.3. The deposit must be provided in cash, by depositing it in the Treasury Single Account (CUT), requesting the respective proof through the issuance of the Collection Document (DC), bank guarantee, according to the model in Annex D or surety bond, according to the model in Annex E.

27.4. The deposit must be submitted on the Electronic Auction Portal on a specific button for this purpose, and the original document must be delivered at the time of signing the Contract.

27.5. The PCE must release the security deposit within a maximum period of 90 (ninety) days from the date of compliance with the granting of the public deed.

28. Payment Term

28.1. The payment of the amount referred to in paragraph 26 shall be made as follows:

- a) Payment of 40% of the amount within a period of no more than 15 days from the date of signature of the contract;
- b) Payment of 60% within a period not exceeding 6 months from the date of signature of the contract.

29. Payment Method

29.1. The payment of the amounts stipulated in the previous Clause may be made by bank deposit, by deposit in the Treasury Single Account (CUT), requesting the respective proof through the issuance of the Billing Document (DC).

29.2. Up to 50% of the value of the award may be paid with public debt securities, valued at their nominal value, in which case interested parties must prove payment of the expected amount, by transfer to the Custody Account (0099) of

the Unidade de Gestão da Dívida (UGD), requesting the respective proof through the issuance of a statement of the Securities Custody Account .

29.3. The sums paid at the opening of this procedure (except for the Cation), are in any event, in the nature of anticipation of compliance, being applicable the respective regime provided for in the Civil Code.

29.4. The security provided pursuant to paragraph 27 shall, unless otherwise stated, be enforced for the purpose of deducting the amount referred to in paragraph 28 b).

30. Non-Compliance

30.1. In the event of non-compliance attributable to the Promising Buyer of any of the obligations arising from the Promissory Contract, namely but not limited to, the non-payment of the amount of the financial consideration under the terms of paragraph 28, the Promising Seller may, without further formalities, terminate this Agreement and make all amounts that may be available to the Seller, received in principle of payment of the Price, if, after written notice to the Prospective Purchaser to perform, and such fails to satisfy the missing obligation within 30 (thirty) days from the date of receipt.

30.2. In the event of non-compliance, attributable to the Promising Seller, of the granting of the public deed of purchase and sale of the Property(ies) under the terms of the Promissory Contract, the Prospective Buyer may terminate the Agreement if, after simple notice for performance and within 30 (thirty) days from the date of receipt, the Promising Seller fails to do so, unless when the temporary impossibility for the granting of the deed has been previously notified under the terms of line c) of paragraph 24.

31. Termination by the Contracting Authority

31.1. Without prejudice to other grounds for termination provided for by law, the Contracting Authority may terminate the Contract, by way of penalties as provided for in Article 383 of the Public Procurement Law, in the event that the contractor seriously or repeatedly violates any of its obligations, in particular, in the event of total or partial non-compliance with the Contract by the Contractor.

32. Termination by the Contractor

32.1. Without prejudice to the other grounds for termination provided for by law, the Successful Tenderer may terminate the Contract in the event of total or partial non-compliance with the obligations assumed by the Contracting Authority in the Contract, which jeopardizes its maintenance.

32.2. In the cases provided for in paragraph 1 of this clause, the right of withdrawal may be exercised by means of a declaration sent to the Contracting Authority, which shall take effect 30 (thirty) days after receipt of the statement.

33. Out-of-Court Settlement

33.1. The Parties declare that they are acting in good faith and that they will make every effort, and will use all means at their disposal, to ensure the continuation of the objectives set out in the Contract, always favoring the resolution of any divergences, doubts or omissions, through the use of collaboration and conciliation.

- 33.2. The parties shall regulate their relations in all matters relating to the Contract and its subject matter, by the principles of equity and good faith, and shall always seek to reconcile their interests with the spirit of mutual collaboration and friendly understanding.
- 33.3. In the event of a dispute or litigation regarding questions relating to the interpretation, application or integration of the Agreement, or with its validity and enforceability, or any of its Clauses, the Parties undertake, in the first place, to try to reach a conciliatory agreement, within 30 (thirty) calendar days from the date of notification, to be carried out by either Party, for the initiation of the conciliation process.
- 33.4. If the dispute is not resolved in accordance with the preceding paragraph, either Party may submit the matter to the jurisdiction of the competent courts in accordance with the following Clause.

34. Competent jurisdiction

- 34.1. For all matters of conflict arising from the Contract, the District Court of Luanda shall have jurisdiction.

35. Confidentiality

- 35.1. The parties undertake, during the tender and during the term of the sale agreement, to maintain total confidentiality and not to take advantage, directly or indirectly, of the knowledge and information to which have access within the scope of these Terms of Reference or the activity.

36. Modifications

- 36.1. If the Contracting Authority or the Successful Tenderer wishes to make any modifications, they must do so by written agreement, in accordance with the legislation in force.

37. Change of Circumstances

- 37.1. The publication of new laws or regulations, as well as the approval of any administrative measures that violate rights, intensify obligations or diminish guarantees legal or contractual obligations of the Parties and which may cause damage or affect the economic and financial balance of the contract and/or the assumptions that led to its conclusion, must be considered, for the purposes of the provisions of the Civil Code, as a change in the circumstances that led the Parties to conclude the Contract.
- 37.2. In the event of the occurrence of any circumstance provided for in the previous paragraph, the Parties shall, by agreement, revise the Contract to restore its balance on the basis of the safeguard of the interests of both.

38. Communications and Notifications

- 38.1. Any communications or notifications between the parties must be made by registered or registered letter and by e-mail with acknowledgment of receipt.
- 38.2. Any communication or notification given is deemed to have been received on the date on which the acknowledgment of receipt is signed.

38.3. Any change in the contact information of each party, including the change of legal representative and registered office, shall be immediately communicated to the other party in accordance with the terms of paragraph 1 of this clause.

39. Counting of Deadlines

39.1. The Deadlines predilected in these Terms of Reference Count-if in Days Useful, with exception of the term towards the presentation from Proposals.

40. Partial Invalidity

40.1. If any of the provisions of the Agreement are found to be invalid or void, this shall not affect the validity of the remainder of the Agreement, which shall remain in full force and effect, and the Parties undertake to agree in good faith on a provision which replaces the provision declared invalid or void and which, as far as possible, produces the same effects.

41. Governing Law

41.1. This procedure is regulated by the clauses contained in the contract, these Terms of Reference, as well as by Angolan Law, namely, the Basic Law on Privatizations and the Public Procurement Law.

41.2. The Successful Bidder must observe, in all its mandatory provisions and in the others, the provisions of the contract, these Terms of Reference and the legal diploma referred to in the previous number, being equally obliged to the punctual fulfillment of all others that are in force in the Republic of Angola and that are related to the Contract.

42. Entry in Vigour

42.1. The Contract to be concluded under this procedure shall enter into force upon the signing of the same by the Parties.

ATTACHMENTS

APPENDIX A – Term of Delivery Model

ANNEX B – Technical Data Sheet

ANNEX C – Bank Guarantee Model

ANNEX D – Surety Bond Insurance Model

ANNEX F – User Manual

Unofficial translation

APPENDIX A

Delivery Term Template

BETWEEN:

AAA – ACTIVOS, LDA., entity holding the possession of the Hotel Buildings, accordingly and on behalf of the Angolan State, duly represented by the Manager, hereinafter referred to as AAA – Activos;

And

[name of the Successful Tenderer], whose registered office is at [address], holder of the NIF_____, as the Successful Tenderer of the Hotel Building [name of the building], duly represented by its [indicate the type Mr. [name]], hereinafter referred to as the Contractor.

On this date, AAA – Activos delivers all the keys to the Hotel Building [name and location of the Hotel Building], as well as all the equipment and assets that are part of it, included in the inventory and technical file annexed to Privatization Contract No. [indicate the contract reference].

The Parties declare that all the above-mentioned goods and equipment (Tangible Fixed Assets) have been verified and validated by the contractor to prove their existence, as well as the state of conservation in which they are found.

With this delivery, all obligations of the State in relation to the Hotel Building and the goods and equipment that are part of it ceases, whether in terms of security or in terms of their maintenance and conservation.

By means of this delivery, the possession of the referred Hotel Building and all its contents is transferred to the Contractor, and the same, as of this date, will assume any and all responsibility for its administration, safety, conservation and operation.

As it is true, the Parties, together with IGAPE, as the managing entity of the privatization process, will sign this document, which is issued in two copies, with the aim of to each of the Parties.

[Place, date and signature of the three parties]

ANNEX C

Bank Guarantee Model

In the name and at the request of [Name of Tenderer/Successful Tenderer], with its registered office at [address], legal person No. [number], registered at the Commercial Registry Office of [location]] under the number [number], with the share capital of [amount in full], Banco [name], with registered office at [address], hereby declares to render in favor of the Ministry of Finance of Angola, located at Largo of Mutamba in Luanda, an autonomous, irrevocable, and first-request Bank Guarantee, in the amount of [amount in full], corresponding to a minimum coverage of 15% of the value of the offer financial, as provided for in the Terms of Reference of the Public Tender via Electronic Auction for the privatization of the [name and location of the Hotel Building].

Thus, by virtue of this Guarantee, this Bank is obliged to pay the first request of the Ministry of Finance, without interference from the guarantee and observing the above amount established without the Ministry of Finance having to justify the request and without the Bank being able to rely on any means of defense for its benefit.

The Bank must pay the sums requested by the Ministry of Finance on the day following the request, after which, without payment being made, interest will be accrued moratoriums at the highest rate charged by the Bank for active operations, without prejudice to the immediate enforcement of the debt assumed by the Bank.

This autonomous Comfort Charter may not be terminated under any circumstances, and will remain in force until its termination, under the terms of the Contest and the applicable legislation.

The Bank also assures that the commitment assumed herein fully satisfies the requirements and determinations of Angolan legislation and, in particular, banking legislation, being the jurisdiction of the Provincial Court of [Identification of the Court of the territorial jurisdiction concerned] which has jurisdiction to settle any questions relating to this warranty, with express waiver of any other.

Finally, the signatories hereby declare that the Bank and they are regularly authorized to provide Bank Guarantees of this nature, in accordance with the provisions of the Bank's Bylaws.

[Place, Date & Signature]

ANNEX D

Surety Bond Template

The insurance company [name], with its registered office at [address], registered at the Commercial Registry Office of [Local] under number [number], with a share capital of [value], provides in favor of the Ministry of Finance, located at Largo da Mutamba in Luanda, and under a surety bond agreement entered into with [name of the Tenderer/Contractor], with registered office at [address], legal person no. [number], registered at the Commercial Registry Office of [local], under no. [number], with share capital of [value in full], guarantee to first request, in the amount of [value], in the amount of [value in full], corresponding to a minimum coverage of 15% of the value of the financial offer, if the Competitor become the successful tenderer, as provided for in the Public Tender Program via Electronic Auction for the privatization of the [name and location of the Hotel Building].

The insurance company undertakes to pay that amount within three working days of the first request from the Ministry of Finance, without the latter having to justify the request and without the former being able to invoke any means of defense for its benefit.

The insurance company may not oppose to the Ministry of Finance any exceptions relating to the Surety Bond Agreement concluded between the Company and [name of the Tenderer/Successful Tenderer].

This surety bond, at the first request, may not under any circumstances be revoked or terminated, remaining in force until its extinction or cancellation, in the terms set forth in the Agreement and applicable law.

This surety bond is governed by Angolan law, and the jurisdiction of the Provincial Court of [Identification of the Court of the territorial district in question] is competent to settle any issues thereof with express waiver of any other.

[Place, Date & Signature]