



Rules of Tender for Sale of Property Through a Competitive, Sealed Bidding Process

Purpose and Scope

These Rules of Tender set out the applicable rules and procedures relating to the submission of bids and to the sale of movable and immovable property by the Kosovo Trust Agency through a competitive, sealed bidding process.

Through a Bidder's participation in any step of the Tender and/or the submission of a Bid, the Bidder agrees and undertakes to be bound by the terms of these Rules.

Special Sale Provisions

Any special sale provisions shall be included in or referred to in the Notice of Public Sale.

Definitions

The following terms shall have the meanings ascribed to them in these Rules unless the sense requires otherwise:

"Agency" means the Kosovo Trust Agency.

"Agent" means anyone acting as agent or acting directly or indirectly on behalf of or under the instructions of another person, whether in a disclosed or undisclosed manner.

"Beneficial Owner" means the beneficial owner of the shares or other types of ownership interests in a legal entity who may have its shares or ownership interests registered in the name of another person (e.g. a relative, broker, trustee, bank or another person or entity) for any reason whatsoever, and who can or is entitled to sell or otherwise dispose of such shares or ownership interests and/or is entitled to receive any dividends, interest or profits.

"Bid" means the Agency-prescribed bid form and any other documents accompanying the bid form submitted by a Bidder in accordance with these Rules and the Notice of Public Sale.

“Bidder” means any person or entity, which is (1) applying to be included in the Potential Bidders Register and/or (2) in the process of preparing, or has submitted, a Bid.

“Bid Documents” mean (1) the Notice of Public Sale, (2) the bidder registration form (3) the bid form (4) any sale brochure or other document describing the Property to be sold, (5) these Rules, and (6) any other documents related to the sale (including any attachments to any of these documents).

“Bid Submission and Opening Date” means the date on which the Bid submission and Bid opening occurs.

“Bid Submission Period” means the period of time on the day stated in the Notice of Public Sale for the submission of Bids during which period the Bid must be submitted to the Agency.

“Board” means the board of directors of the Kosovo Trust Agency.

“Control Person” means any person who is in a position to control the actions of a legal entity (corporation, partnership, etc.) by employment contract, voting proxy or otherwise, such as, by way of example only, a managing director, a CEO, a Chairman of the board of directors or a major shareholder.

“Enterprise” means any entity or assets which the Agency has the authority to administer under Section 5 of the KTA Regulation.

“KTA Regulation” means UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency, as amended by UNMIK Regulation 2005/18.

“Notice of Public Sale” means the notice issued by the Agency for the sale of Property, which provides specific details of the Tender.

“Potential Bidders Register” means the confidential register of eligible bidders which will be held by the Agency.

“Property” means property which is the subject of a Tender, whether moveable or immoveable.

“Representative” means any person legally authorised to act on behalf of the Bidder throughout the Tender and until, and including, the conclusion of a sale.

“Rules” means these rules of tender.

“Sale Agreement” means any bid documents constituting an agreement between the Bidder and the Agency on the terms and conditions of sale of the Property.

“Sealed Bid Tendering Process” means a competitive process, also known as a sealed-bid auction or sealed-bid tender system, for which only sealed offers are invited and accepted, and are publicly opened.

“**Tender**” means the process whereby the Agency selects a Winning Bidder to purchase the Property.

“**UNMIK**” means the United Nations Interim Administration Mission in Kosovo.

“**Winning Bidder**” means the Bidder with the winning bid price pursuant to these Rules who shall purchase the Property.

Introduction

The Agency has been established pursuant to UNMIK Regulation No. 2002/12 of 13 June 2002 on the Establishment of the Kosovo Trust Agency, as amended by UNMIK Regulation No. 2005/18. Part of the Agency’s mandate is the administering of Enterprises and carrying out activities which will preserve or enhance the value and viability of such Enterprises, including the sale of the assets of such Enterprises to physical and legal persons.

For additional information regarding UNMIK and the Agency, please visit the following websites: www.unmikonline.org and www.kta-kosovo.org

1. Notice of Public Sale

- 1.1 The Agency shall cause a Notice of Public Sale with respect to a particular Tender to be published which will likely include but is not limited to, the following:
- (a) Sale Number;
 - (b) Bidding information, including place(s), date and time for submission of the bidder registration form and the Bids, and the bid closing time and date (Bid Submission and Opening Date);
 - (c) Details of Property/Property listings – lists of Properties must be supplied with item numbers for Bidder’s reference;
 - (d) Condition and location of Property: All property is offered for sale "as is, where is”;
 - (e) bid deposit amounts (if any);
 - (f) Property inspection places and times;
 - (g) bidder registration requirements as well as contact person(s), place(s) and times at which bidders can register and obtain the bid form as well as additional information; and
 - (h) Any specific terms and conditions of sale and/or sale provisions.

The Notice of Public Sale as well as the bidder registration form and the sample bid form will be available from the Agency directly and will be posted on the Agency Internet web site: www.kta-kosovo.org.

2. Prohibited Bidders

- 2.1 The following legal and physical persons shall not be eligible to bid and shall be automatically disqualified if bids are submitted by them.
- (a) Natural and legal persons who are currently subject to bankruptcy or insolvency proceedings;
 - (b) Natural persons who have been found guilty of a felony which was committed after June 1999 or who are otherwise subject to criminal proceedings;
 - (c) Natural and legal persons who (i) are in material breach of a contract entered into with the Agency or with any of the enterprises administered by the Agency (the existence and materiality of such breach to be determined by the Agency in its sole discretion) or have previously been a Winning Bidder in a sale organized by the Agency but have failed to complete a purchase with the Agency, unless otherwise agreed by the Agency; (ii) have any debt outstanding to the Agency or an Enterprise administered by the Agency; (iii) are on a list of persons or entities with whom the Agency, UNMIK or the European Union is prohibited by a recognized international entity, such as OFAC, from carrying out transactions, including a list of persons who are the subject of international sanctions or export control rules; or (iv) are natural or legal persons who have not paid fines imposed upon them by the Agency pursuant to its powers set out in section 27 of UNMIK Regulation 2002/12 or subject of any claim or dispute (whether the matter is in court or otherwise) related to section 28 of UNMIK Regulation 2002/12, as amended;
 - (d) Natural and legal persons acting as an Agent for any of the persons or entities referred to in sections 2.1(a)-(c) above or any Agent who has not disclosed his/her/its principal(s), as required by these Rules, Terms and Conditions; and
 - (e) Legal entities whose Beneficial Owners or Control Persons fall within the categories outlined at section 2.1 (a) – (d) above.

3. Bid Overview and Bid Conditions

- 3.1 There shall be one round of bidding.
- 3.2 In order to submit a Bid, the Bidder must be registered in the Potential Bidders Register in accordance with section 5 below.
- 3.3 By the submission of a Bid, Bidders shall be bound by the following bid conditions:
- (a) The total amount of the winning bid price, with such total reduced by the amount of any deposit, shall be paid by the Winning Bidder in the manner and within the timeframe specified in these Rules and/or the Notice of Public Sale.

(b) Without prejudice to any other provision of these Rules, Bidders shall supply all information and documentation requested by the Agency (i) in order to satisfy any money laundering requirements or procedures (ii) for the purposes of any investigations by the Agency to confirm the origin of the purchase price funds (iii) for the purposes of the Agency confirming that Winning Bidders are eligible under section 2.1 of these Rules and/or (iv) for the purposes of compliance with any Applicable Law or international best practice, as determined by the Agency.

3.4 All costs and risks connected with responding to the Tender, including due diligence, are at the sole responsibility and risk of the Bidder.

4. Obtaining Bid Documents

Prospective Bidders shall be instructed in the Notice of Public Sale how to contact the Agency in order to apply for registration and, upon registration, receive the applicable Bid Documents and any additional information and/or instructions regarding the tender.

5. Eligibility Registration Procedures

5.1 In order to be eligible to bid in the Tender, a Bidder must apply for registration (with the required documentation as specified in the bidder registration form) at least five (5) business days prior to the Bid Submission and Opening Date. The Agency shall only include a party in the Potential Bidders Register if such party is determined by the Agency to have satisfied the requirements of this section 5. The Agency reserves the right to remove a potential or actual Bidder from the Potential Bidders Register at any time should the Agency determine that such Bidder should have been determined to be ineligible under section 2.1 above or otherwise not be in compliance with the requirements of this section 5. The Agency shall provide a copy of the completed, signed and stamped bidders registration form to Bidders who have been included in the Potential Bidders Register, and provide them with a unique bidder's registration number ("Bidder Number"), official bid form(s) and bid envelope(s).

5.2 In order to be considered for inclusion in the Potential Bidders Register, a Bidder must submit to the Agency a completed bidder registration form, with accompanying documents as instructed therein.

Bidders may obtain and submit the bidder registration form at the places, dates and times specified in the Notice of Public Sale. Prospective Bidders may also use a downloaded version of the bidder registration form that will be available for free download at the Agency's web site www.kta-kosovo.org. Along with the bidder's registration form, all other information and documentation specified therein must be provided.

The name of a potential Bidder set out in a submitted bidder registration form must be the same name used in all additional and subsequent documents submitted by a Bidder with respect to a Bid. A Bidder's name and address must also be completed as they wish it to appear on all subsequent documents related to their Bid. Bidders can only select one option on the registration form, to

indicate registering as either an individual or a legal entity (e.g. company). Changes will not be permitted after award.

The Agency may charge a minimal bidder registration fee to cover expenses, which shall be specified in the Notice of Public Sale. An appropriate certification (e.g. a copy of the deposit slip) of the payment of this fee to an account of the Agency must be submitted to the Agency at the time of submission of registration documents.

The Agency may request that a Bidder provide such further confirmations, information or documentation as the Agency may require to confirm any of the matters referred to in this section 5.2.

- 5.3 All information submitted in an application for inclusion in the Potential Bidders Register must be in typewritten form.
- 5.4 By applying to be included in the Potential Bidders Register, the Bidder is confirming and representing that it has the authority, whether implied or otherwise, to disclose the information contained in the application to the Agency and that all persons or legal entities mentioned in such application have consented to such disclosure. By applying, the Bidder also agrees to hold harmless and indemnify the Agency in respect of any claim that may be made against it by any person or entity in relation to such disclosure.
- 5.5 The Agency shall use reasonable efforts to ensure that its staff treat all information provided in an application for inclusion in the Potential Bidders Register as confidential and shall not disclose such information to third parties except (a) as may be required by law or by order of a court of competent jurisdiction, either in Kosovo or in jurisdictions outside of Kosovo or (b) to law enforcement agencies inside or outside of Kosovo or (c) to any organs instructed by the Agency for the purposes of background checks and any other reasonable investigations in the case the Bidder becomes a Winning Bidder or (d) if the a Bidder has otherwise agreed in writing.
- 5.6 Documents submitted for the purposes of this section 5 must be submitted in accordance with any language requirements set out in any Bid Document.

6. Contents of Bids

- 6.1 For each item for which a Bid is submitted the following documents must be placed in a separate sealed and labelled envelope provided by the Agency upon registration, with all information required on the label (Sale Number, Bidder Number, Item Number, Description of Item, and Bid Opening time, place and date) completed:
 - (i) An original of the completed bid form;
 - (ii) A copy of the completed, signed and stamped bidder registration form issued upon registration to Bidders who have been included in the Potential Bidders Register;

- (iii) If and where required as indicated in the Bid Documents, an original bank letter from a reputable bank (not being a bank registered in a country which is on the 'blacklist' of the Financial Action Task Force (FATF), confirming that the Bidder will have access to sufficient funds to pay its bid price;
- (iv) An appropriate certification of the payment of any required bid deposit (e.g. a copy of the deposit slip); and
- (v) Any other accompanying documents as specified in these Rules, the Notice of Public Sale and/or the bid form.

7. Bid Deposit

- 7.1 Where a bid deposit is required as indicated in the Notice of Public Sale, such bid deposit, payable to the Agency, shall be paid by way of a bank transfer or a cash deposit made to an account designated by the Agency.
- 7.2 The bid deposit of the Winning Bidder shall become part of the purchase price. Bid deposits associated with Bids that are not deemed to be a Winning Bid shall be fully refundable, except as otherwise set out in these Rules. The Agency shall endeavour to return the bid deposit of any bidder who participated in the bidding but who is not determined to be a Winning Bidder within forty-five (45) days from the Bid Submission and Opening Date.
- 7.3 A bid deposit shall be forfeited and applied to the Agency's cost and expenses of sale:
 - (a) if the Winning Bidder fails to pay the winning bid price within the time period specified for payment in accordance with these Rules; and
 - (b) in the circumstances set out in Sections 13.2 and 13.7 below.

8. Submission of Bids and Bid Selection

- 8.1 All Bids must be submitted to the Agency on the Bid Submission and Opening Date and at the time and location specified in the Notice of Public Sale. The Agency shall not receive any Bids that are presented outside of this time period or delivered to any other location. Offered purchase prices set out in Bids shall remain in effect for a period of forty-five (45) days from the Bid Submission and Opening Date.
- 8.2 A receipt stating the date, hour, and minute of the Agency's receipt of a Bid shall be issued to the person submitting the Bid on behalf of a Bidder at the time of the submission of the Bid. The person submitting the Bid shall not identify the Bidder at the time of the submission of the Bid. The Agency's determination of the time of submission shall be final.
- 8.3 The Bids shall be opened in public within three hours of the end of the Bid Submission Period and all bid prices shall be read aloud and recorded. The highest price shall be identified and announced as the winning Bid. In the event

of identical highest bids, they shall be placed in a “box/hat” and one of them shall be drawn to determine the winning Bid.

- 8.4 If the Bidder awarded the status of Winning Bidder fails to pay the purchase price stated in its Bid within the time specified for making the payment set out in these Rules, the award shall become void, and the next highest bidder shall be deemed to be the Winning Bidder, until the transaction is complete.
- 8.5 If not present at the Bid opening, a provisional Winning Bidder will be contacted by telephone and/or fax/e-mail. If an awarded bidder cannot be contacted within 3 business days after the Bid opening, the award shall be made to the next highest bidder.

9. Due Diligence

- 9.1 Information collection and analysis is the responsibility of each Bidder. The Agency shall, within the limits of its administrative resources, use reasonable endeavours to allow all Bidders equal and fair access to the Property and all relevant documentation, prior to the submission of their Bids. The Agency shall allow Bidders to collect information in Kosovo at the location of the Property and at any data room the Agency may establish for the inspection of documents relating to the property. The Agency shall not be required to translate any documentation for Bidders or provide any interpretation services. The Agency, in its sole discretion, may decline access to information or to Property to any person who does not appear to be a genuine qualified potential investor or Bidder.
- 9.2 The Agency shall be solely responsible for coordinating with Bidders any visits to the Property location and any data room. Bidders shall raise inquiries only with the Agency or any agents authorised by the Agency in respect of the sale. Visits and property inspections may only take place during the dates specified in the Notice of Public Sale.
- 9.3 The submission of a Bid is an acknowledgement by the Bidder to the Agency that the Bidder has made its own independent investigation and assessment of the conditions of any Property which is being sold and the available documentation (including but not limited to any Sale Brochure and/or data room information, public searches and registries, etc.) and that it has satisfied itself as to those circumstances and as to the accuracy of all information about such Property provided by or on behalf of the Agency. In no case will failure to inspect the Property and/or investigate and acquaint itself with available information constitute grounds for a claim or for the withdrawal of a bid after the bid submission deadline. Neither the Agency nor any Enterprise shall assume any responsibility for any conclusions or interpretations made by any Bidder on the basis of information made available to it.
- 9.4 Any Bid contingent upon further due diligence or investigation or upon another Bidder's Bid may be deemed incomplete and unacceptable by the Agency.
- 9.5 As a result of circumstances in Kosovo, it is acknowledged by all relevant parties that certain documentation concerning Property to be sold may have been lost, destroyed or removed. Therefore, Bidders must be aware that any analysis of

documents may be incomplete and should be accompanied by a thorough assessment and inspection of the Property which is being sold.

- 9.6 The Bidder shall be responsible for any required interpretation and translation during the due diligence process.

10. Modification, Withdrawal, and Late Submission of Bids

A Bidder may not, without the Agency's permission, modify a Bid or withdraw its Bid after the Bid has been submitted to the Agency. No Bids will be accepted after the end of the Bid Submission Period.

11. Payment

- 11.1 Unless otherwise provided in the Notice of Public Sale, a Winning Bidder will be given up to ten (10) business days following the date of notification to the Winning Bidder that the Property was awarded to him/her to submit payment to the Agency. The Winning Bidder shall pay the total amount of the winning bid price (reduced by the amount of any bid deposit) into a bank account designated by the Agency. The Agency shall not accept cash payments except for purchases amounting to less than €1,500 in which case payments shall be made in the manner and at the place and time specified in the Notice of Public Sale and/or the bid form. There shall be no partial or deferred payment of the purchase price.

- 11.2 The funds used for the purchase of any property being sold must not come from any FATF blacklisted jurisdiction and the Bidder may be required to sign a statement about their origin prior to completion of any Sale.

12. Authorisation to Sign

Any bid documents constituting an agreement between the bidder and the Agency on the terms and conditions of sale of the Property requiring signing by Bidders shall be signed by an authorised representative of the Bidder. Supporting documentation proving the Representative signatory authority must be presented to the Agency as may be required by the Agency.

13. Agency's Reservation of Rights

13.1 Amendments to Tender Requirements and Contents

The Agency reserves the right to amend, modify, or terminate any of the procedures set out in these Rules at any time without prior notice and at no cost or liability to the Agency. Amendments to these Rules shall be issued in writing by the Agency and shall be made public and sent to each prospective Bidder registered in the Potential Bidder Register. The Agency also reserves the right (a) to amend or modify the property listings an/or any descriptions of the Property offered under the Tender and (b) terminate the Tender at its sole discretion.

13.2 Rejection of Winning Bidder

The Agency may reject a Winning Bidder's Bid if the Agency becomes aware that information contained in the Winning Bidder's application to be registered in the Potential Bidders Register or any information in the Winning Bidder's Bid is false. In such a case, the Winning Bidder's bid deposit shall be forfeited and the second-highest ranking Bid (and in turn the third-highest ranking Bid, if necessary) will be treated as the winning Bid.

13.3 Cancellation of Tender

The Board may cancel or amend in whole or in part the Tender for the sale of any property at any time and for any reason in its sole discretion and without liability. In particular, but without limiting the generality of the preceding sentence, the Agency may cancel the Tender if the Agency receives indications of or suspects any collusion among Bidders, the use of coercion or threats by a Bidder or Bidders to dissuade the submission of Bids by others or to affect the contents of another Bidder's Bid, or any illegal or improper activity performed in connection with the Tender by any person. Should the Agency so cancel the Tender, the Agency shall not be held responsible for any costs or liabilities incurred by any Bidder or third parties. If the Agency cancels the Tender, all bid deposits received and any other funds received (except for the non-refundable bid submission fee) shall be returned within 15 business days of the date of cancellation.

13.4 Disclaimer

To the extent permitted by law, all Property is sold on an "as is, where is" basis and the Agency and its representatives expressly disclaim:

- (a) any and all liability for representations, warranties or statements contained in any written material (including without limitation the Notice of Public Sale and/or sale brochures and the contents of any data room information) furnished or in any information orally transmitted to a Bidder; and
- (b) any representations or warranties implied by any law.

This disclaimer shall not apply to those statements made fraudulently by the Agency.

13.5 Language

These Rules have been prepared in the English, Albanian and Serbian languages. The versions in Albanian and Serbian shall be for the convenience of parties only and in the event of any discrepancy between the language versions, the English language version shall prevail.

13.7 Voidability of Sale

Notwithstanding section 10.5 of UNMIK Regulation No. 2002/13 or other provisions in Applicable Law, should it be determined that (a) the funds used by a Winning Bidder to acquire the property derived directly or indirectly from illegal activity; or (b) the Buyer was involved in collusion or any other violation of these

Rules, and/or any special sale provisions, terms and conditions as determined in the Bid Documents, then the Sale shall be voidable by the Agency, and the Purchaser's deposit shall be forfeited.

14. Dispute Resolution

- 14.1 Subject to section 14.2 below, the decisions of the Agency arising under these Rules or the Tender generally shall be final and shall not be appealed to any court or other organ. Bidders shall not be entitled to file a claim in any court within or outside Kosovo, either to reverse a decision of the Agency or for compensation for costs or liabilities arising as a result of a decision of the Agency, so far as allowed by law.
- 14.2 Notwithstanding the preceding clause, the parties acknowledge and agree that the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters shall have exclusive and final jurisdiction over the Kosovo Trust Agency.

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