

Pursuant to Article 11, paragraph 1, sub-paragraph 1, Article 14, paragraph 1, sub-paragraph 6 and Article 86, paragraph 6 of the Law on Electronic Communications ("Official Gazette of Montenegro", No 40/13), the Council of the Agency for Electronic Communications and Postal Services in its session of 16.10 .2014 adopted

## **THE RULEBOOK**

### **on the conduction of public tender and conditions for designation of the Universal Service Operator**

The Rulebook was published in the "Official Gazette of Montenegro", No 45 of 24/10/2014

#### **Subject**

#### **Article 1**

This Rulebook prescribes the content and process of public tender for the selection of operators for the provision of the Universal Service (hereinafter referred to as public tender).

#### **The goal of public tender**

#### **Article 2**

The Agency for Electronic Communications and Postal Services (hereinafter referred to as the Agency) shall conduct a public tender with a view to ensure the provision of the Universal Service in the territory of Montenegro for a period of five years, so as to enable the most efficient way of providing the Universal Services at affordable prices.

#### **The public tender procedure**

#### **Article 3**

The public tender procedure consists of the following steps:

- making a decision to initiate the procedure of public tender;
- preparation and advertising of public tender;
- preparation and submission of bids for public tender;
- public opening of submitted bids;
- review and evaluation of bids; and
- adopting a decision on designation of the Universal Service Operator.

#### **Starting the process of public tenders and advertising the public tender**

#### **Article 4**

The Agency will make a decision to initiate the process of public tender, which defines all detail relevant to conducting the public tender at least six months before the expiry of the time frame for which the Universal Service Operator is designated.

The public tender will be published on the Agency's website and in one printed daily newspaper that is distributed throughout the territory of Montenegro. All documentation relevant to the public tender will be published on the Agency's website.

The published notice of the public tender will contain the following information:

- the subject of the public tender, including a set of services from the scope of the Universal Service, which are the subject of the public tender;

- conditions for participation in the tender;
- the procedure for submitting questions concerning the public tender;
- deadline, place and manner of bid submission;
- criteria for the selection of the Universal Service Operator to be applied in the public tender;
- deadlines for consideration and evaluation of bids and making a decision on the designation of the Universal Service Operator;
- information about the contact person who is appointed by the Agency to provide additional information about the public tender; and
- other information and data that may be relevant to the public tender.

### **Questions and answers relating to public tender**

#### **Article 5**

Operators participating in the public tender have the right to ask questions about the procedure of public tender, to seek clarification and/or additional information, for the total duration of the public tender. Questions can be made in one of the following ways: by e-mail, fax, registered mail or direct filing with the Agency.

The Agency will answer the questions within 5 days from their receipt, placing responses on the Agency's website.

### **Preparation, submission and opening of bids**

#### **Article 6**

The bid submitted by a bidder in the public tender should contain:

- 1) Evidence of the bidder's ability to provide the Universal Service which is the subject of the public tender:
  - detailed description of experience in providing the same services from the scope of the Universal Service for which the public tender is conducted;
  - proof of financial capacity to provide the service (e.g. financial statements of the bidder, information on bidder's ownership structure, etc.);
  - evidence of the operational capability for providing the service (e.g. organizational structure, operational structure and resources, information on human resources);
  - plan to continue to provide the services from the scope of the Universal Service to existing users of the Universal Service.
- 2) Technological capabilities of the bidder's network to provide adequate universal services from the scope of the Universal Service:
  - description of the current state of electronic communications network, which the bidder uses for providing the Universal Service;
  - network improvement plan for the next five years, taking into account the planned increase in the scope of delivery and improvement of the quality of the Universal Service;

- 3) Cost estimates relating to the provision of the Universal Service for the next five years, based on a cost model that includes assessment of the costs of providing services, revenue estimate and assessment of tangible and intangible benefits that are gained by providing universal services that are the subject of the public tender, in accordance with the regulations for the Universal Service;
- 4) The price of the Universal Services for end-users, with a special price offer for disadvantaged persons and the price offer and other benefits for people with disabilities, as well as movement of these prices in the next five years;
- 5) Plan for ensuring the availability of services from the scope of the Universal Service for persons with disabilities in the next five years; and
- 6) Other information and documentation on the ability of the bidder to provide the Universal Service, as determined by the Agency, which can be considered relevant to the concrete procedure of the public tender.

The bidder shall submit its bid in sealed envelopes within the period stipulated by the decision to initiate the procedure of public tender.

The Commission appointed by the Agency shall open the submitted bids not later than one hour after the deadline for bid submission. Bidders shall be entitled to attend bid opening.

The Agency may require from the bidder further information and documentation that the Agency considers relevant to designation of the Universal Service Operator at any time before making a decision on designation of the Universal Service Operator.

The estimates, plans, prices and other statements and projections, which the bidder submits in its bid, are binding on the bidder.

### **Criteria for consideration and evaluation of bids and designation of the Universal Service Operator**

#### **Article 7**

When considering the bids and evaluating which of the bidders offers the best terms and conditions of providing the Universal Service, the following criteria shall taken into account:

- 1) Ability to provide a service from the scope of the Universal Service for all end-users in the territory of Montenegro;
- 2) Technological capabilities of the network taking into account the planned expansion of the scope and quality of the Universal Service;
- 3) The costs of providing the service;
- 4) The price of the service;
- 5) Benefits for disadvantaged persons and persons with disabilities; and
- 6) Other objective, efficient, transparent and non-discriminatory criteria which the Agency has determined as relevant and included in the decision to launch a public tender, depending on the subject of the public tender and the specific circumstances that are related to the tender.

In the tender documents, the Agency shall explain in detail the application of the criteria for the review and evaluation of bids, with regard to the need to select those criteria and their logical connection with the subject of the tender. The criteria must be defined clearly and comprehensively, with pre-defined rules and methodology of the work of the selection commission, which provides an objective verification and non-discrimination of bidders. Where applicable, mathematical formulas shall be applied for evaluation by a certain criterion and in case of criteria which are subjective by nature, the bases for their evaluation will be defined in more detail.

The Agency shall make the decision on the designation of the Universal Service Operator within two months from the date of public bid opening.

If the bidder that is designated as the Universal Service operator fails to comply with the conditions contained in the decision, estimates, plan, offered prices and other statements and forecasts from the bid, thereby negatively affecting the provision of the Universal Service, the Agency will require from the Universal Service Operator to comply with the decision and the bid within a reasonable time. If the Universal Service Operator fails to comply with the request of the Agency in due time, the Agency may annul the existing decision and start a new public tender for designation of the Universal Service Operator in accordance with the law.

### **Termination of validity**

#### **Article 8**

On the effective date of this Rulebook, the Rulebook on the conduction of public tender and establishing criteria for designation of the Universal Service Operator ("Official Gazette of Montenegro", No 35/10) shall cease to be valid.

### **Entry into force**

#### **Article 9**

This Rulebook shall enter into force on the eighth day of its publication in the "Official Gazette of Montenegro".

No: 0402-5960/1

Podgorica, 20.10.2014

**Agency for Electronic Communications and Postal Services**

Šaleta Đurović, PhD

President of the Council

m.p.