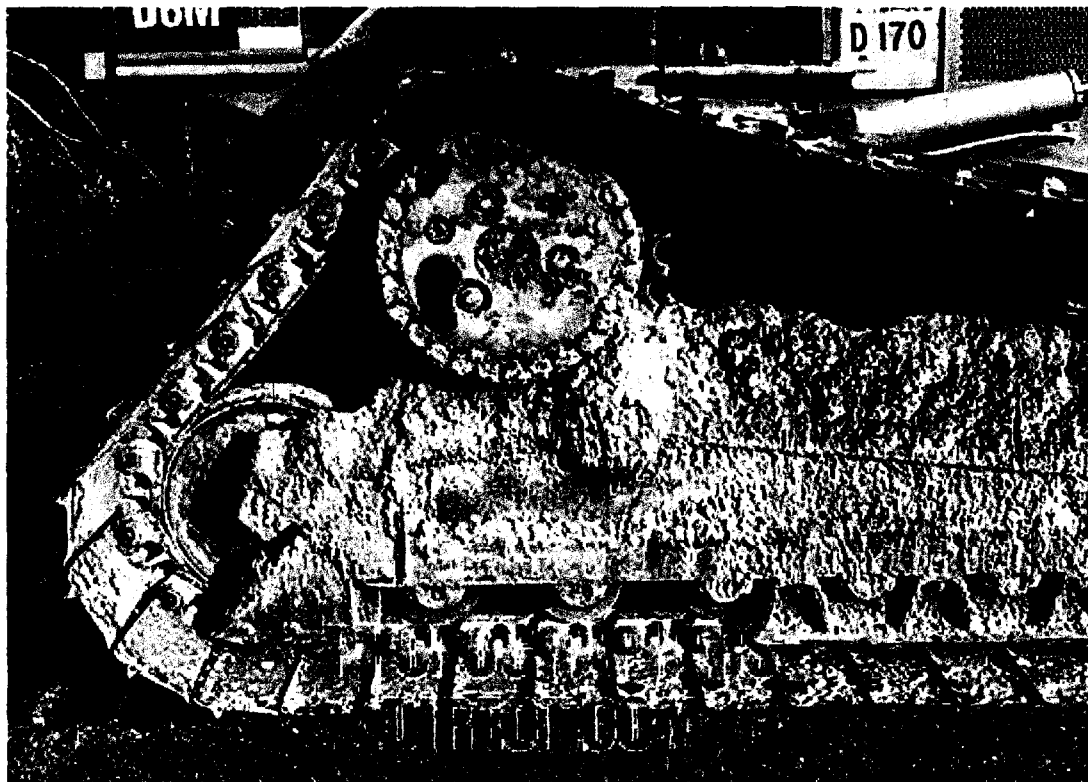


EX. N

RELEVANT PROCUREMENT LAWS & POLICIES OF TIMOR LESTE

Timor-Leste Ministry of Finance

Best Practice Guide to Government Procurement



Decree Law sets out the procurement processes which must be carried out by government officers when purchasing goods, services or works on behalf of the Government of Timor-Leste.

The Ministry of Finance has developed a series of guides outlining the process and required documentation.

Steps in the Procurement Process

1. Strategic Procurement Planning
2. _____
3. Tender Processes and Tender Documents
4. _____
5. Post-tender Negotiations
6. Establishing Contracts
7. _____
8. Annual Procurement Report
9. _____
10. Decentralisation and Accreditation

Further information

- Index to the Best Practice Guide to Government Procurement

- Procurement Directorate: roles and responsibilities of Procurement Directorate and Departments, and Procurement Director Profile

■

1 Strategic Procurement Planning

Strategic planning helps establish a structure or framework to ensure costs are minimised and delivery is certain, with minimal risk. This increases the chance of success of a procurement project. Best Practice Guide 1: Strategic Procurement Planning ... [continue reading »](#)

■

2 Tender Specification Writing

A specification is a document that clearly, accurately and completely describes in detail what the government needs to purchase. A clear, accurate and complete specification is the foundation of any purchase of goods, services
[continue reading »](#)

■

3 Tender Processes and Tender Documents

When procuring on behalf of the Government of Timor-Leste, you must understand the different tender processes and when and how to use them. This is set out in Decree Law. Best Practice Guide 3: Tender Processes and Tender Documents Key information ... [continue reading »](#)

■

An assessment of the best net overall outcome for government is to take account of all relevant ‘whole of life’ costs and benefits: that is the full cost of each good, service, or works over its expected useful life – not just at time of p
... [continue reading »](#)

■

5 Post-tender Negotiations

Post-tender negotiations should be considered an important part of a purchasing strategy in government procurements of high value. The aim of post-tender negotiations is to get the best outcome and commercial arrangements for the government. Negotia ... [continue reading »](#)

■

6 Establishing Contracts

Public contracts need to be drafted with a view to promoting the best value for Government. Best Practice Guide 6: Establishing Contracts Key documents Ministry of Finance has developed a series of guides on the procurement
[continue reading »](#)

7 Managing Contracts

After a contract has been established, the contract needs to be managed throughout the contract term. An appointed contract manager should ensure that a contractor fulfils contract obligations and liabilities. The manager is also responsible for ens ... [continue reading »](#)

Procurement Decree Law requires government procurement information and data to be gathered, analysed and reported on annually by each Ministry and government agency, to the Ministry of Finance's Procurement Service. Reporting requirements vary ... [continue reading »](#)

9 Suppliers Registry

Procurement Law states that the Ministry of Finance's Procurement Service will maintain a central Suppliers Registry that lists the current supplier details and the procurement contracts, both current and past, which suppliers are associated ... [continue reading »](#)

10 Decentralisation and Accreditation

Procurement Law outlines a process of decentralisation and accreditation of procurement processes in which Government Ministries are now authorised to take responsibility for their own purchases. Accreditation is the process of enabling or authorisi ... [continue reading »](#)

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

**Decree-Law n. 10 / 2005
of the**

Procurement Legal Regime (PLR)

PREAMBLE

Procurement budget execution¹ by the Government of the Democratic Republic of Timor-Leste (RDTL), aiming to guarantee the Administration and other entities and public services needs satisfaction, requires the establishment of a specific legal regime that ensures good financial resources management.

The experience already gained in the goods procurement operations, in construction execution and in services delivery, recommends the adoption of clear and simple rules, tending to facilitate the organization of the procurement procedures, by defining an administrative and legal procedures base which permits a coherent development of these activities, following the existing international regulations on this matter.

In order to achieve transparency, economy and efficiency it is important to establish legal rules adequate to the Country's development needs, which permit harmonizing² good practices in procurement procedures, with an adequate control of these same activities.

In the same way, it is essential that the legal order related to the procurement shall be an incentive to goods production and to services delivery or to construction execution, which simultaneously guarantees competition and fosters the participation of national and³ international enterprises.

Therefore,

The Government decrees, in the terms of the no.1, paragraph e) of the Article 115° and in the paragraphs a) and d) of the Article 116° of the Constitution of the Republic, to prevail as law, the following:

**TITLE I
PRINCIPLES AND GENERAL RULES**

**CHAPTER I
Common Dispositions**

**Section I
Generalities**

**Article 1.
Objectives**

The objective of the Procurement Legal Regime (PLR) is to establish the general rules for budget execution⁴, aiming at⁵ the acquisition of goods and services or at the construction execution, intended toward⁶ the needs satisfaction of direct or indirect entities of State administration.

¹ Execution of procurement expenses = realisation of procurement expenditures = procurement budget execution ?

² to harmonize >>> harmonizing

³ as >>> and

⁴ expenses execution >>> budget execution

⁵ to >>> at

⁶ to >>> toward

Article 2.
Scope of Application

1. The scope of application of the present decree⁷ covers the procurement procedures for the Public Service done using the General Government Budget or commitments from other financial resources, which belong to or are controlled by them⁸.
2. All goods and services acquisition activities as well as the construction for public purposes are subject to this procurement general legal regime as a basic rule⁹.
3. Without detriment of the application of the general principles of the present decree-law, the rules of their specific procurement legal regimes shall apply to the following entities:
 - a) related to the National Defense or to the National Security;
 - b) declared secret or the object of official secrecy;
 - c) subjected to special security measures, in the terms of the legislation in force in the RDTL or by international regulations;
 - d) related to the competencies of the Autonomous Drugs and Medical Equipment Service, EP;
 - e) any others that the Government decides to regulate separately.
4. In the execution of expenditure that covers simultaneously the acquisition of goods, construction execution, services delivery, accordingly to the present decree and one of those subject to one special regime, the prescribed¹⁰ regime for the component of highest stated value applies¹¹.
5. The diplomatic and consular representations, and permanent RDTL missions abroad, shall follow the principles of the present legal regime with necessary adaptations, to be established in a joint decree of the Ministry of Planning and Finance and of the Ministry of Foreign Affairs and Cooperation.

Article 3.
Definitions

1. For the effects of the present decree-law and of their complementary rules, the terms used have the following meanings:
 - a) **Announcement** : is the act of publishing through the press or social communication, by which the Public Service intends the participation of potentially interested parties¹² in providing goods, executing construction work or delivering services, in the procedures to be initiated;
 - b) **Procurement** : is the acquisition of goods, construction execution and services delivery intended for public purposes;
 - c) **Procurement of Goods or Supply** : is the purchase, leasing, including the rental of premises, financial leasing, with or without the purchase option and that may include accessory contracting and the related¹³ installation¹⁴ and maintenance work;
 - d) **Bidders** : are generically defined as all parties interested in supply of goods, construction execution or delivery of services which are the object of procurement procedures, after they demonstrate their interest to participate in the procedures;

⁷ for the context, "diploma" could be replaced by "decree", "charter" or "document"

⁸ in their control >>> by them

⁹ sentence clauses rearranged

¹⁰ foreseen >>> foreseeable >>>> prescribed

¹¹ financial expression = stated value ?

¹² parts >>> parties

¹³ respective >>> related

¹⁴ set up >>> installation

- e) **Central Supply & Property** ¹⁵ : the service in charge to centrally acquire goods for current use and moreover¹⁶ of a lot of public services, maintaining and supplying goods according to their respective needs;
 - f) **Invitation** : is the communication broadcasted directly by the public service to certain pre-qualified suppliers or participants in a limited competition by pre-qualifications, in a restricted competition or in a negotiation procedure, in order for them to present their bids;
 - g) **Supplier or Vendor** : the natural or legal person, as a potential contractual party, in a goods acquisition, construction execution or service delivery procedure, intended to the public needs satisfaction;
 - h) **Works (Construction)** : the action or the set of actions intended for **fixed assets works execution**, which are related to the repairs, maintenance or building of new facilities intended to guarantee the development of activities with public purposes. These may also include, any other professional activity of civil engineering and of other similar nature, as well as the project work and the supply of certain material resources required by their characteristics;
 - i) **Services Delivery** : the action or set of actions, by which a natural or legal person provides services to a public service or to a third party at their expense. These that may include the supply of certain accessory resources or materials required by the characteristics of the service to be delivered or to the construction execution directly related with the service;
 - j) **Public Service** : the awarding¹⁷ or procuring entity: all Services and entities mentioned in the last article which have the power to participate directly on the procurement management and have the competence to initiate the acquisition of goods, construction execution or services delivery procedure, for itself or for third parties;
 - k) **Type of procurement procedure** : each of the variants to be used as methods for contracting goods, construction and services.
2. With a descriptive but not limited character and in order to facilitate the comprehension of the present decree-law, other terms definitions also used in the text of the present decree can be found in the Annex 1

Section II Principles

Article 4. Legal and Equality Principles

1. In designing and executing the procurement procedures, the Public Service observe the rules typified in the present decree, admitting only the exceptions foreseen in the law.
2. The access and participation conditions are equal to all interested parties and those criteria shall be well expressed in all procedures for procurement processes, any discrimination of the bidders being prohibited¹⁸.
3. In each procedure shall be guaranteed the consultation of the biggest possible number of interested parties and always the minimum number required by the law.

Article 5. Principles of Public Interest, Impartiality and Confidentiality

1. In the preparation and during all the procedures, the Public Service shall look after the maximum collective need satisfaction, which are entrusted by the law and constitute their responsibility.
2. In the procurement procedures all interests shall be considered, as in¹⁹ the tender and in other relevant documents, clauses liable to benefit or damage any of the parties cannot be included.²⁰

¹⁵ "Central de Fornecimentos do Património" : Fornecimentos = supply, furnishing, storing; Património = something inherited >>> property/ assets/ possessions >>>> CENTRAL SUPPLY & PROPERTY

¹⁶ "of the remaining" replaced by "and moreover" : for current use and moreover a lot of public services ?

¹⁷ "adjudicatory" >>> "awarding" (ajudicacao = adjudication, award)

¹⁸ interdicted >>> prohibited; phrases reversed

¹⁹ sendo = as in, such as ?

²⁰ phrases rearranged

3. The Public Service, their employees and agents shall protect the confidentiality of documents and information handed over by the bidders.

Article 6.
Principles of Good Faith and Proportionality

1. In executing the procurement procedures, the public and private entities shall act according to the requirements²¹ of authenticity and truthfulness in communicating with each other.
2. The procedure to be adopted shall be chosen considering its degree of adequacy, its costs and the benefits for achieving the purposes.

Article 7.
Principles of Transparency and Publicity

1. The criteria for award²² shall be well defined ahead of the proceedings and the information will be guaranteed to the interested parties starting from the date of opening²³.
2. The choice of proposals shall be always substantiated in writing.
3. The Public Service shall guarantee that the intention to contract is publicized, except in special regimes foreseen in this decree and other regulations applicable.
4. The present decree-law, its complementary rules, the decisions and general applicable administrative directives, related to the procurement procedures, as well as all their amendments²⁴, shall be promptly provided to the public and updated in a systematic manner.

Article 8.
Principles of Stability and Security

1. The relevant documents that constitute the basis to the procedure shall be maintained unchanged during all the process, until the end.
2. In the procedures wherein any negotiation is not foreseen, the bids presented by the bidders are unchangeable until the respective award²⁵.
3. After the award, the parties can introduce, by mutual agreement, any adjustments of accessory or functional character as long as it is clearly observes the principle of public interest.
4. After receiving the bids, the Public Service can only withdraw²⁶ unilaterally in the cases foreseen in this decree.

Article 9.
Principle of Accountability

The parties that come up in the procedure, entities, employees, contractors and economic agents can be held accountable, in a civil, financial or disciplinary manner, according to the law, by misconduct that violates the provisions of²⁷ the present decree, without detriment to the applicable²⁸ criminal penalties.

²¹ demands >>>> requirements, repositioned

²² decision >>>>award

²³ opening or publication? In this context, opening means the start of the tendering process, not opening of tenders

²⁴ emends >>>> amendments

²⁵ decision >>> award

²⁶ give up = withdraw, pull out ?

²⁷ exposed in>>>>provisions of

²⁸ subject = applicable

Article 10.
Principle of Unity of the Expense

1. The procurement amount to consider is the total cost for the acquisition of goods, the construction execution or the service delivery.
2. It is forbidden to split²⁹ the expense with the intention to subtract it in the foreseen regime, including splitting the total acquisition cost amount into several items, so that any of them doesn't reach the threshold³⁰ amounts established.
3. The competencies established to approve additional expenses sums by way of changes, price revisions and amendments to the original contracts, which are properly justified and done according to the opinion of the Ministry of Planning and Finance, can only be authorized exceptionally³¹, depending on the existence of budget allocations, up to 10% of the cost foreseen in the initial contract and until a limit of USD\$ 40,000³² and the circumstances foreseen in this decree.
4. Exceeding the referred percentage or the limit in the last number (No 3), the competence is transferred to the entity that shall authorize the contract, accordingly to the actual total cost of the procurement operation.

Article 11.
Principle of Respect to the General Rules

1. All the inherent acts to procurement shall observe the legal rules in force in the RDTL, they being of general character, these PLR³³ rules or other specific or complementary rules.
2. The present decree-law is applicable, as a basic rule, and with supreme³⁴ character, in the case of gaps in the decrees³⁵ mentioned in number 3 of article 2.

Article 12.
Principle of Accordance with International Regulations

The present decree is not applicable when it contradicts with an international obligation contracted by the RDTL, as:

- a) a treaty or any other international agreement signed by the RDTL with one or more States;
- b) an Agreement signed between the RDTL and an international financial institution.

Article 13.
Retroactivity and Interpretation

1. The present regulations are not applicable in retroactivity, without detriment to the legitimate expectations of the interested parties and as long as it doesn't result in damage to the State interests.
2. The substantive interpretation and the eventual gap filling in the regulations of the present charter are done by a Council of Ministers Resolution.
3. The provisions in the last number (No. 2) do not apply in the case of procedural interpretations which are not susceptible to affect the interests of the parties and the principles espoused³⁶ in this Section.

²⁹ fraction >>>> split

³⁰ limit >>> threshold

³¹ exceptionally = on a case by case basis

³² words rearranged

³³ PLR = Procurement Legal Regime

³⁴ superlative >>>> supreme

³⁵ diplomas >>> decrees

³⁶ exposed >>>> espoused

**Article 14.
Period Counting**

1. As general principle, the deadline shall provide enough time for the parties interested in the competition to prepare and submit the documentation and other information required, having in mind reasonable Public Service needs.
2. The time frame to present the bids is counted continuously.
3. The deadline suspension or prorogation shall be done accordingly to the rules established in the present decree.
4. In the case of the last day established as a deadline is a national holiday, the deadline moves to the following working day.

**CHAPTER II
COMPETENCIES IN THE PROCUREMENT PROCESS**

**Section I
Competencies of the Entities**

**Article 15.
Entities competent to authorize the procurement process**

1. The following entities are competent³⁷ to authorize to initiate a procurement process:
 - a. the Prime Minister, in the contracts with a value equal to or greater than³⁸ USD\$ 1.000.000 (One Million United States Dollars);
 - b. the Minister of Planning and Finance;
 - c. the senior leadership of the organs of sovereignty, the Ministers and the Secretaries of State, accordingly to their respective Organic Laws;
 - d. the heads expressly nominated and authorized by the respective senior leadership of the organs of sovereignty and by the Ministers and Secretaries of State;
 - e. the senior leadership of the Autonomous Services, as the public entities and other organs endowed with administrative and financial autonomy;
 - f. the groups³⁹ with the participation of State capital greater than 50% (fifty percent) that although without⁴⁰ entrepreneurial nature, follow specific⁴¹ public purposes;
 - g. all the organs and public services subjected to the State Budgetary discipline or mostly⁴² financed by it.
2. The amounts to which extent⁴³ the entities are competent to initiate, approve and ratify the procurement operations, are established in the Annex 2 of the present charter.

**Article 16.
Competencies of the Minister of Planning and Finance**

The Minister of Planning and Finance has the following powers in relation to the procurement procedures:

- a. to execute the procurement policy approved by the Government and to present proposals to the Government in relation to it;

³⁷ competente = competent, sufficient, qualified, suitable

³⁸ superior to >>>>greater than

³⁹ collective persons >>> groups

⁴⁰ don't have any >>>> without

⁴¹ distinguished >>> distinguished >>> specific

⁴² in the majority >>> mostly

⁴³ extend>>>extent

- b. to present to the Government the proposals for procedures which guarantee the fulfillment of the general principles and the rational needs satisfaction of the State;
- c. to present to the Government reports on the fulfillment of procurement policies and to propose the adoption of necessary corrective measures;
- d. to provide ministerial decrees⁴⁴, instructions and administrative acts, which are necessary to the implementation of the present decree-law;
- e. to analyze and decide the operations that are empowered⁴⁵ by the present decree-law and other Government' dispositions;
- f. to ask for consultation and summon whichever procurement processes, independently of which stage/ phase they fulfill, in order to guarantee its harmonization with the politics defined by the Government;⁴⁶
- g. other competencies that shall be determined / assigned by the Government or the law.

Article 17.
Competencies of the Procurement Service

1. The Procurement Service from the Ministry of Planning and Finance, hereinafter called the Procurement Service is the department responsible for the coordination of procurement procedures regulated in the present decree and which holds the following competencies:

- a. to advise the Minister of Planning and Finance on the global politics in terms of procurement;
- b. to participate in the activities related to Government policy⁴⁷ execution in relation to procurement;
- c. to organize, coordinate, control and manage the procurement operations accordingly to the provisions established in the present decree-law and other complementary rules;
- d. to recommend to the Minister of Planning and Finance the methodology parameters, procurement instructions and procedures manuals that shall be provided to the implementation of the present decree-law;
- e. to supervise the compliance of the procurement planning policy, the competition procedures, logistical administration and general supply;
- f. to perform examination⁴⁸, purchase and management operations that are empowered according to the present decree-law;
- g. to maintain, for⁴⁹ 5 (five) years, the documentation related to the procurement operations;
- h. to promote reunions and periodical meetings with other Public Administration Services and the remaining services entrusted to conduct decentralized procurement, aiming to promote the compliance with the policies and rules in force in procurement matters;
- i. to ensure the specialized preparation of employees in areas dedicated to procurement;
- j. other competencies conferred by⁵⁰ the present decree-law and in the rules in force.

2. The Procurement Service is also in charge of the following tasks:

⁴⁴ diplomas >>> decrees

⁴⁵ attributed by = affected/ determined by = empowered

⁴⁶ clarify application/ translation of this clause

⁴⁷ politics >>> policy ("politica" can mean either?)

⁴⁸ revisao = revision, examination, overhaul

⁴⁹ during>>>for

⁵⁰ attributed in >>> conferred by

- a. to manage procurement whenever it is within their competency, according to the provisions of the present decree-law and prior⁵¹ written express delegation from the Minister of Planning and Finance;
- b. to propose the imposition of administrative measures against offenders of the present Legal Regime, according to the legal procedures established.

Article 18.

Responsibilities of the Procurement Service

1. The Procurement Service shall carry out the procurement operations requested by the Public Services referred in the article 15. , in the following cases:
 - a. when the procurement exceeds the limits approved for decentralized implementation;
 - b. when it is expressly requested by the senior leadership of these Services;
 - c. when it relates to the procurement of the administrative and financial territorial decentralized institutions of the State, without competencies for their own procurement.
 - d. for any other institutions, for which spending are done at the expense of the State General Budget or with other funds in their possession, except in the cases that have administrative and financial autonomy granted by the law.
2. For compliance purposes with the present decree-law and other/ most⁵² complementary rules, the Procurement Service also has the following responsibilities:
 - a. to guide methodology of the procuring entities;
 - b. to advise the Public Services on the status of the financial resources execution accepted⁵³ for their centralized procurement operations;
 - c. to draw up and maintain updated records and accounts in order to reflect faithfully the economic actions carried out;
 - d. to prepare information and financial reports to reflect the operations, resources and expenses related with the procurement activity and to present them to the senior levels within the established deadlines;
 - e. to guarantee an adequate price-quality relationship of goods, construction and services which are the object of procurement;

Article 19.

Decentralization in procurement

1. The public entities mentioned in the article 15., in compliance with their respective budget allocation, have competence to carry out decentralized procurement operations up to the amount authorized by the law.
2. The entities referred in the last number (No.1) can request the centralized acquisition by the Procurement Service or by the competent institution, even if the operations don't exceed the referred total amount, which are related to construction, goods or services referred in the number 3 of the article 2.
3. The procurement procedures, for which amount doesn't exceed the limit for which the entities are competent, shall be initiated, chosen, approved and ratified by the entities competent in the terms of the law.

⁵¹ previous >>>> prior

⁵² remaining = other??

⁵³ received = accepted

Article 20.
Responsibilities related to the decentralization

1. The Public Services authorized to carry out decentralized procurement are obliged to comply with the rules established for these operations and have the following responsibilities:
 - a. to submit to the Procurement Service monthly activity summaries of their procurement, in the established deadline;
 - b. to submit to the Procurement Service the Annual Evaluation Report of the procurement operations carried out.
2. The Heads of the entities authorized to operate decentralized and accordingly simplified procedures, are responsible to run and control the development of these operations without detriment of those activities to be delegated on their behalf⁵⁴ according to the law.
3. In the cases considered necessary, the senior leadership of these entities can create a Procurement and Contracts Commission to advise them in the decision making at this level.
4. The entities authorized to make decentralized expenditures according to the simplified procedures are also subjected to fulfill the **provisions of** Article 18 number 2, paragraphs c), d), and e)

Article 21.
Delegation of Competencies

1. The delegation of competencies in procurement matters is only allowed when is expressly authorized by the law.
2. The senior leaders of the entities mentioned in the paragraphs c), d), e) f) and g), of the article 15. that have subordinated services or institutions, can delegate the competence to carry out the procurement procedures in writing.
3. The Heads that received delegation of competencies cannot further delegate to others.
4. The entity that delegates it is not dismissed of responsibility of compliance with the law in each one of the procurement procedures that were done by the subordinated institutions or entities in which he/she has delegated.

Article 22.
Authorization of expenses for rental of premises

1. The same entities competent to initiate and approve procurement operations are also competent to authorize expenses for renting premises for public purposes.
2. The annual rent amount of the leasing is taken into account to determine the institution competent to choose as well as to approve, ratify or sign the contract.
3. The expenses on renting of premises overseas also require the authorization of the Minister of Planning and Finance and of the Minister of Foreign Affairs and Cooperation.

Article 23.
Contracts Committee

1. The procurement operations, when its amount or nature justifies shall be evaluated and approved also by the Contracts Committee, established according to the law.
2. Without detriment of the provisions of the present decree, the competencies of the Committee are defined in the decree law relative to Public Contracts.

⁵⁴ no seu sbstituto = on their behalf ?? (not "substitute")

**Section II
Procurement Records**

**Article 24.
Archive**

1. With the purpose to control the basic information related to their activities, the entities authorized to carry out procurement operations and centrally the Procurement Service of the Ministry of Planning and Finance, shall draw up and maintain an archive, which must contain the minimum information:
 - a. the annual procurement plan;
 - b. the data related to the Procurement Announcements and Invitations;
 - c. the results of the proceedings, including the names of the firms and individuals awarded⁵⁵ contracts, as well as their amounts;
 - d. the information on measures applied to the bidders;
 - e. all the other information that can be required by the legal rules.
2. The rules relative to the operation records and the vendors and suppliers can be regulated by ministerial dispatch of the Minister of Planning and Finance.⁵⁶

**Article 25.
Vendors Registry**

1. The Vendors Registry is created with the purpose of controlling the information related to the vendors, is to be maintained with the appropriate confidentiality by the Procurement Service and shall contain the following:
 - a. Vendors List, separated by area of specialization;
 - b. the data relative to the vendors of goods and services that have participated in procurement operations, accordingly to the respective specific rules;
 - c. the information on measures⁵⁷ applied to each one of them.
2. The entities with decentralized competencies for effecting procurement, can request information from the Procurement Service of the Ministry of Planning and Finance in relation to the vendors, during the phases of pre-qualification or qualification assessment, in order to guarantee the certainty of the data indicated by those.
3. As requested by the interested parties, the Procurement Service can issue certificates of Vendors' Registration.

**CHAPTER III
BIDDERS**

**Section I
General Rules on Competition**

**Article 26.
Declared qualifications**

1. The natural or legal persons competing for a procurement operation, shall demonstrate their qualifications, namely the compliance with the requisites established in the law and ~~the current operation itself~~.⁵⁸

⁵⁵ attributed with = awarded

⁵⁶ should be item "f"? By itself, to what does it relate? "that" deleted – makes sense

⁵⁷ measures – could be data checks, sanctions or qualified use (use with qualifying conditions/reservations)

⁵⁸ verify translation/ intent

2. The assessment of qualifications criteria shall be based only on the essential and specific requisites referred in the law and in the pre-qualification and/or tender.

**Article 27.
Essential requisites**

1. In order to participate in the procurement procedures, the bidders shall fulfill the following essential requisites:
 - a. possess an entrepreneurial capacity, worthy of trust, experience and sufficient reputation to provide guarantees of fulfilling the contract;
 - b. have a legal capacity to enter into the contract;
 - c. have fulfilled all legal requisites required in the RDTL to act in a procurement operation;
 - d. possess enough financial resources to perform the contract;
 - e. have at the disposal personnel with professional and technical qualifications required to fulfill the contract;
 - f. have fulfilled all its fiscal obligations and social security contributions, in the case of vendors⁵⁹ with headquarters in Timor-Leste;
 - g. do not present any of the disqualification causes foreseen in the present decree.
2. Without detriment of the bidders' right to protect their intellectual property or their business secrets, the Public Service can require the appropriate documentation or other information that may be considered useful to certify their qualifications.

**Article 28.
Specific requisites**

1. The Public Service can establish any other specific requisites in relation to the qualifications to be fulfilled by the bidders, which shall be indicated in the pre-qualification documents, or in the bid documents or in the request for quotation.
2. In no⁶⁰ case can the Public Service establish discriminatory requirements for any of the bidders, or against categories or groups of them, based on the nationality or other aspects that are not objectively justified.

**Article 29.
Causes for disqualification or impediments**

1. The bidders that fall into the following categories⁶¹ are considered disqualified and excluded from the procurement proceedings:
 - a. are insolvent or declared bankrupt;
 - b. are in a situation or process of ceasing activity, trustee, and bankrupt or in liquidation;
 - c. their business is being administered by a court or by a judicial agent;
 - d. their business activities⁶² have been suspended by judicial decision;
 - e. have fiscal, social contribution debts or debts of any nature with the State;
 - f. their directors or administrators have been convicted by judicial sentence in the process of being judged, for any criminal offense related to their professional conduct or with the delivery of false statements or wrongful

⁵⁹ for this context, "adjudicators" = "awardees" = vendors ??

⁶⁰ obvious error ?? "nenhum" = "no", not "any"

⁶¹ clauses interchanged

⁶² phrases rearranged; "empresarias" = organising/ fixing/ financing = entrepreneurial = business

information in relation to their qualifications, for entering into a contract with any RDTL public institution within the previous five years;

- g. have been disqualified by any other cause in result of administrative suspension or licensing procedures;
 - h. the bidders or their representatives are found to be in an incompatible situation, in the terms of the present charter
 - i. have submitted more than one bid in the same tender.
2. The foregoing⁶³ to disqualification causes and impediments are informed to the bidders in the pre-qualification documents or in the bid documents.
3. At any time In verified cases, the Public Service shall disqualify the bidder where the information provided in relation to their qualifications are false, contain errors or ~~(have)~~ essential omissions⁶⁴.

Article 30.
Evidence of requisites

1. The Public Service can require the bidders to provide appropriate documentation or other information that may be considered useful to ascertain their qualifications.
2. The requirement can include the notary certification or the official confirmation of any document relative to the supplier qualification in the procurement procedures.

CHAPTER IV
INCOMPATIBILITIES

Section I
The Incompatibilities relative to the Participants

Article 31.
Incompatibilities of the Employees and Civil Service Agents

Accordingly to the exclusivity regime established by the law, in relation to the civil servants and Civil Service Agents, it is incompatible the exercise of any act of bidders' representation in procurement procedures, except in the case that they participate as official representatives of the public entity, to which they provide services.

Article 32.
Conflict of Interests

1. The civil servants and Civil Service Agents shall observe, in relation to their participation in the procurement operations, the rules on conflict of interest established by the Civil Service Statute.
2. The Civil Service, in their intervention on the procurement procedures, cannot be represented or in any way advised by the following persons:
- a. family members to the second degree in blood relation, spouses or those maintaining business relations with one of the bidders;
 - b. those within the last three years, counting from the date of the tender opening, who have been partners with any of the bidders.
3. The Public Service cannot adjudicate a contract to family members until the second degree of blood or associates of consultants which intervened at any stage in the proceeding.

⁶³ previous >>>> foregoing (paragraphs 1(a) to 1 (i)

⁶⁴ which omit essential features / information

**Article 33.
Incompatibility of bidders**

Without detriment of the bidders' right to request from the Public Service the necessary clarifications and audiences, it shall be incompatible the direct exercise, or by representatives, of any activity with the purpose to influence the institutions responsible for pre-qualifications or qualifications assessment or to adjudicate the contract.

**Section II
General Rules on Incompatibilities**

**Article 34.
Relationship of the bidders with the Public Service**

1. Except in the cases foreseen in the law, no negotiations⁶⁵ shall take place between the Public Service and one bidder in relation to a bid submitted, before the contract adjudication.
2. Clarifications⁶⁶ can only be requested in relation to drawings, conceptual orientation or technical specifications, technical characteristics of quality requested in a pre bid conference or by writing, but in no case are clarifications allowed relative to prices and conditions of payment.⁶⁷

**Article 35.
Effects of the Incompatibilities**

1. At any time or phase in the procedure that the authorities responsible for the procurement control detect a conduct which is incompatible or has conflicts of interest, such responsible authorities shall be requested to make a declaration of invalidity of the acts relative to the procurement in progress⁶⁸
2. In the case of civil servants or Civil Service agents, the authority that detected the incompatibility shall request the bidders to enter into a corresponding⁶⁹ inquiry and disciplinary process, according to existing provisions in the legislation in force.

**TITLE II
PROCUREMENT PROCEDURES**

**CHAPTER I
TYPES OF PROCEDURES**

**Section I.
Types of Procedures**

**Article 36.
Pre-qualification procedures**

The pre-qualification procedure is the one that can be summoned by the Public Service ahead of conducting the procurement process, aiming to identify and select through a preliminary analysis, the bidders which are fulfilling the requisites previously established in the pre-qualification documents.

**Article 37.
Admitted procurement procedures**

In the terms and conditions exposed in the present charter, the procurement procedures can be of the following types:

- a. Public Tender, required as compulsory in the procedures with a value greater than USD\$ 50,000 (fifty thousand United States Dollars), in which any interested person can present a bid, as long as they ~~meet~~⁷⁰ the requisites required in the tender documents;

⁶⁵ words interchanged

⁶⁶ position changed

⁶⁷ why no clarifications on conditions of payment ??

⁶⁸ phrases rearranged

⁶⁹ correspondent = communication between parties/ a two way process; corresponding = related/ resulting?

⁷⁰ reunite>>>>meet

- b. Limited Tender by Pre-qualification, only the bids from those selected in the pre-qualification procedure are admitted;
- c. Restricted Tender, in which only those invited can present bids;
- d. by Negotiation or Two Stage Tendering;
- e. by Request for Quotations;
- b. by direct appointment⁷¹;
- c. by simplified procedure.

**Section II
Tenders**

**Article 38.
National Public Tender**

1. The national public tender is the one employed by the Public Service with the objective to promote participation, as preferred bidders, the individuals⁷² or firms constituted in Timor-Leste, which possess at least fifty one percent by Timorese citizens.
2. In the case of procurement of goods, construction or services, with an equal or lesser value to USD\$ 100,000 (one hundred thousand United States Dollars) the tender shall be compulsorily national;⁷³
3. In the national tender and all subsequent procedures, the current legal currency of the RDTL as well as the official languages shall be used⁷⁴.

**Article 39.
International Public Tender**

1. The international public tender is employed with the objective to promote the participation of bidders from all countries.
2. The international public tender is compulsory in the following cases:
 - a. the public works construction, which value is estimated to exceed USD\$1,000,000 (one million United States Dollars);
 - b. the contracts for the purchase of goods or relative to technical services⁷⁵, which value is estimated to exceed the USD\$250,000 (two hundred and fifty thousand United States Dollars);
 - c. the consultancy services contracts, which value is estimated to exceed the USD\$200,000 (two hundred thousand United States Dollars).
 - d. following the announcement of a pre-qualification procedure period without at least three bidders having been pre-qualified.
3. After the end of the period announced for a National Tender, without any bidders applying, pre-qualifying or qualifying and after fulfilling all formalities in force, the Public Service has the power to initiate an International Tender, ~~without detriment to choosing other better procedures~~⁷⁶.
4. In the international public tender can also be presented the persons referred in the last article (~~#38~~), subject to the equality of conditions and fulfilling the requisites established for the procedure in progress.⁷⁷

⁷¹ ajuste = agreement, arrangement = appointment (for the context)

⁷² singular persons >>>> individuals

⁷³ Article 38/ clause 2 is poorly phrased ? Definition in clause 1 using "preferred" contradicts use of compulsory/ obligatory in clause 2 ??

⁷⁴ phrases rearranged

⁷⁵ technical services = non-consulting services ??

⁷⁶ verify translation

5. In this public tender, the current legal currency in the RDTL is used.
6. In the international public tender the English Language shall be used⁷⁸, without prejudicing the translations that shall be done in Portuguese or Tetum.

Article 40.
Limited Tender by Prequalification

1. The limited tender by pre-qualification can be initiated when the technical complexity or the high amounts involved advise for a prior assessment of the financial, commercial and technical capacities of the bidders.
2. In this tender the invitation for the bids presentation is addressed to the bidders already admitted in the pre-qualification procedure.

Article 41.
Restricted Tender

1. The restricted tender is the one directed to all registered suppliers that possess predetermined qualifications and characteristics already known to the Public Service which initiates the procedure.
2. The restricted tender can also be directed to all registered suppliers, which comprise ⁷⁹ a determined geographical area or are dedicated to a specific commercial activity, or which fulfill the specific requisites required by the type of procurement in mind.
3. A restricted tender can be employed, when the time and costs necessary to examine and assess a large number of bids are disproportionate to the small amount of construction, goods or services to be procured.
4. After the invitation and in all proceedings, the Restricted Tender follows the same rules of the Limited Tender by pre-qualification.

Article 42.
Procedure by Negotiation

1. The procedure by negotiation takes place in two stages and is used exceptionally, in the case of supply of goods, complex construction work or services with special characteristics, in the following situations:
 - a. when it is not possible in advance to determine by the Public Service the technical and contract specifications, due to the high level of specialization required to determine exactly the goods, construction work and services specific requisites or their inherent contingencies;
 - b. when the Public Service needs to consider more than one bid or technical option in order to be able to decide which one better correspond to their needs,
2. This procedure shall be done in two stages:
 - a. in the first, the Public service invites the bidders through a public announcement or through an invitation addressed to at least three bidders, in order to present their plans, drawings and technical studies, without prices in order for the Public Service itself to be able to design the specific procurement requisites.
 - b. in the second stage, the Public Service issues an invitation to present final technical bids, including prices, following the same rules of the Restricted Tender.

⁷⁷ those eligible for national tender may also participate in international tender subject to equality & qualification

⁷⁸ "shall be used" repositioned

⁷⁹ compromised >>>> comprised

**Article 43.
Procedure by Request for Quotations**

1. The procurement procedure by request for quotations is the one addressed to at least three suppliers already known to the Public Service and can be used always when the value of the contract is less than USD\$50, 000 ~~(fifty thousand United States Dollars)~~ for goods, construction or services of minor complexity, which does not require technical specifications in advance.⁸⁰
2. In this procedure, the choice of the contract adjudication/ award is the responsibility of the Public Service itself without tender procedures.

**Article 44.
Procurement by Direct Appointment**

1. The procurement procedure by Direct Appointment is an exceptional procedure, by which the Public Service can direct to one or to determined suppliers to satisfy the specific procurement needs and pre-existence of special circumstances in the terms espoused in the articles 92 to 94.
2. In this procedure the choice for the contract recipient rests with the Public Service itself without developing a tender

**Article 45.
Simplified procedure**

1. In the present charter, the current expenses which do not imply a tender or a new contract or amendment of existing contracts, namely those for the acquisition of consumables, water supply, communications or electricity and in general all other periodical and previously registered budget items are considered, without detriment to their adequacy and subject to the established government policy, simplified procedures
2. For the fulfillment of the last number, the scope of the simplified procedure can be changed by ministerial dispatch of the Minister of Planning and Finance.

**Section III
Choice of Procedures**

**Article 46.
Competence to choose the type of procedures**

The initial⁸¹ choice of the type of procedures has to be well founded and it belongs to the competent entity to initiate the procedure, except when the authorization of a hierarchically superior entity is compulsory, in the terms of the present decree.

**Article 47.
Criteria of Choice**

1. The choice of the procedure shall be determined having taken into account the value and accordingly the rules established in the present decree.
2. The procedures chosen shall be the most adequate for the procurement needs satisfaction, in the terms of the present decree.
3. Whenever possible, preference will be given to the public tender procedure.

⁸⁰ note well the qualification >>>meaning goods of simple description/ off the shelf

⁸¹ previa = previous, prior, preliminary >>>>initial??

CHAPTER II
PROCESSING THE PREQUALIFICATION PROCEDURES

Section I
Prequalification procedures

Article 48.
From the beginning

1. The prequalification procedure is initiated with the publication of a prequalification announcement, inviting the possible interested parties to participate.
2. Except by legal imperative, the authority competent to initiate the public tender is also empowered to decide on the conduct, or not, of a pre-qualification procedure.
3. With the appropriate adaptations, the pre-qualification procedure follows the common tender process rules, including the participation of the institutions responsible for opening the sealed envelopes and the evaluation of bidders.

Article 49.
Compulsory Prequalification

The pre-qualification procedure shall be compulsory in the following cases:

- a. the procurement operations relating to **specifically conceived**⁸² equipment, industrial facilities, specialized services, turnkey contracts, design and construction or management contracts.
- b. ~~in construction for which value is superior to USD\$ 250,000 (two hundred and fifty thousand United States Dollars),⁸³~~
- c. in the cases foreseen in the law.

Article 50.
Requisites of Prequalification Announcements

1. The entire prequalification announcement shall contain the minimum information in detail on the Annex 3 of the present charter.
2. In the pre-qualification announcements it shouldn't be requested nor received the following information from the bidders:
 - a. bidding price;
 - b. design specifications;
 - c. descriptive models of technical characteristics;
 - d. quality standards;
 - e. methods of quality analysis;
 - f. packaging;
 - g. trade marks or any other signs and symbols;
 - h. any other that may obstruct the equal conditions of bidder participation.
3. The prequalification announcement publication observes the same rules to applying the tender which it precedes.

⁸² "specifically conceived" = custom designed/ tailor made/ bespoke

⁸³ note well this requirement – it further complicates works procurement procedures & if applied to the letter will mean that all internationally tendered construction must employ prequalification of contractors

**Article 51.
Prequalification Documents**

1. In the prequalification procedure, the pre-qualification documents shall be provided to each bidder, so that they present the necessary data for decision.
2. The prequalification documents shall include, as a minimum, the information established in the Annex 4 of the present Decree Law.
3. The pre-qualified bidders shall maintain the fulfillment of the prequalification requisites and provide them in the ways and opportunities requested by the Public Service.
4. The price of the prequalification documents shall reflect only the cost of their printing and its distribution to the bidders.

**Article 52.
Amendments to the Prequalification Announcements**

1. Until the third day before the deadline for the presentation of the prequalification documents and if there are exceptional reasons to justify it, the Public Service can make amendments to these documents, which shall be published in the same terms and conditions as the prequalification announcement.
2. If it is necessary, the entity itself declares the procedure suspended and grants a prorogation period to the presentation of the prequalification documents.

**Article 53.
Information on the Prequalification documents**

1. The bidders have the right to request to the Public Service by writing, information on the pre-qualification documents, in the period established in the prequalification documents.
2. After having received the request in the terms of the previous number (53/1), the Public Service shall reply in the shortest possible period.
3. The reply to any request that may be of the interest of all bidders, shall be communicated to all of those who have received prequalification documents by the Public Service, without the source of the request being identified.

**Article 54.
Additional evidence of requisites for the Prequalification**

1. The jury⁸⁴ can exceptionally request the bidders that have been pre-qualified to demonstrate, once again, their qualifications according to the same criteria used in the prequalification, setting a deadline for this evidence to be made.
2. In this case, the deadline established for the end of the prequalification procedure shall be prorogated, which shall be communicated to all bidders.
3. The bidder failing to demonstrate again their qualifications when requested shall be disqualified.
4. In the case of the last number (54/3), the jury is obliged to promptly notify each bidder who have been requested to give a new demonstration of their qualifications, to do it in a satisfactory way.

**Article 55.
Validity of the Prequalification requisites**

The prequalified bidders, shall maintain the fulfillment of the pre-qualification requisites and make them available in the ways and opportunities that have been requested by the Public Service.

⁸⁴ jury = evaluation committee/ team

**CHAPTER III
PROCESS OF PROCUREMENT PROCEDURES BY TENDER**

**Section I
Common Rules of Process**

**Article 56.
Stages in Tender Procedures**

1. The procurement procedures by Tender have the following common phases:
 - a. opening and publication;
 - b. ~~pre-bid~~⁸⁵ conference
 - c. ~~receiving~~ of bids;
 - d. Public act of opening the bid's sealed ~~envelope~~⁸⁶ by the ~~committee~~⁸⁷ in charge;
 - e. exclusion or admission of bidders, by the committee;
 - f. assessment, choice and classification of bidders by the committee;
 - g. publication of intention to award⁸⁸ the contract;
 - h. period for bidders complaints⁸⁹;
 - i. contract signature.
2. Independently to the common stages established in the last number (56/1), each tender follows the specific rules for their process, established in the law and in the tender documents.

**Section II
Opening and Publication**

**Article 57.
Public Tender Opening**

1. The tender opening⁹⁰ is the procedural stage in which the Public Service makes an announcement to the potential suppliers, aiming at their participation in the procurement operation.
2. The announcements shall include, at least, the elements contained in the Annex 5.

**Article 58.
Tender program**

Through the tender Program, the Public Service sets up the dates in which takes place every stage of the procurement procedure, from the tender opening to the signature of the contract.

**Article 59.
Announcement for Bids Presentation (Invitation for Bid Submission)**

1. The announcement for bids presentation consists in calling the potential interested parties to present their bids, in order to be assessed.
2. In the announcement for bids presentation shall be indicated the factors to take into consideration in the assessment⁹¹ and whenever possible, the manner of quantification⁹².

⁸⁵ previous>>>>prebid

⁸⁶ cover = envelope

⁸⁷ commissao = commission, committee

⁸⁸ adjudicate >>>>award

⁸⁹ *this bidders' complaints period is presently not observed/ not encouraged ??*

⁹⁰ the word "opening" should be replaced by "commencement", "publication" or "announcement"

⁹¹ assessment = assessment/evaluation criteria

3. In the limited tender by prequalification, in the restricted tender and in the procedure by negotiation, the announcement is replaced⁹³ by a direct invitation to the suppliers pre-selected, which may or may not be published according to the decision of the Public Service that initiates the process.
4. The entity that is competent to initiate the process shall sign the announcement or invitation.

Article 60.

Invitation to tender proceeding Prequalification and for the Restricted Tender

1. In the limited tender by prequalification, the Public Service invites the bidders that were already prequalified.
2. This invitation shall accompany of the Tender Documents, in the terms established in the present decree and the specific complementary rules for this tender.
3. The committee in charge of assessing the prequalifications is also responsible for assessing the bids.
4. Besides the documents established, it can be required from the pre-qualified bidders the presentation of a honor statement relative to continuing to fulfill or not those requisites and an update of the information initially required in the pre-qualification documents.
5. In the case of a contract with a value more than USD\$100,000 (one hundred thousand United States Dollars), the pre-qualified bidders shall include also a sworn⁹⁴ statement on the following aspects:
 - a) access to lines of credit⁹⁵ and availability of other financial resources;
 - b) work schedule and contracts obtained after the pre-qualification notification;
 - c) legal disputes in progress in which the bidder is involved;
 - d) equipment and personnel availability to fulfill the contract, in the case of award⁹⁶.
6. In the Restricted Tender, the invitation is directed only to the suppliers previously selected⁹⁷ by the Public Service.

Article 61.

Publication of Announcements

1. To guarantee the information to the interested parties, the publication of announcements is compulsory in the following procurement procedures:
 - a. National Public Tender
 - b. International Public Tender
 - c. Pre-qualification procedures.
2. The publication of announcements is subject to the following rules:
 - a. all announcements referred in number 1 shall be published in the press;
 - b. the announcement for national public tender shall be published in at least one nation-wide distribution newspaper, in Portuguese or Tetum;
 - c. the announcement for an international public tender shall be published at least in two international distribution newspapers of recognized prestige, in English and other foreign language used in international business as well as in one nation-wide distribution newspaper, in Portuguese or Tetum;

⁹² quantification = scoring

⁹³ substituted>>>replaced

⁹⁴ honor >>>> sworn

⁹⁵ delete comma "lines of credit availability" ? or lines of credit and availability of other financial resources

⁹⁶ adjudication>>>award

⁹⁷ words rearranged

- d. The announcements are sent simultaneously to all means of communication, in which is intended the publication.
3. Without detriment of the obligation of publishing in the newspapers, the announcements can be published also in other means of communication and information, in conformity with the rules and procedures established for electronic business.
4. In the remaining processes of procurement procedures required to be published, the rules of this article apply with the appropriate adaptations.

**Article 62.
Tender Documents**

1. Depending on the program established and during the period defined in the announcement, the Public Service shall provide a set of documents to each bidder.
2. The minimal requisites of the Tender Documents are described in the Annex 6 of the present decree.
3. The price of these documents shall reflect only the cost of its printing and their distribution to the bidders.

**Article 63.
Pre Bid Conference**

1. As established in the Tender Documents, the Public Service shall conduct in the date, time and place set up a Pre Bid Conference in order to clarify all the details relative to the procedure in progress.
2. The Pre Bid Conference has a public character.
3. **In the Pre Bid Conference not entailing the verbal instructions, the content of the bidding document can be changed.⁹⁸**
4. When as the result of the Conference it is necessary to **amend** or change any terms of the tender, this decision shall be done after by the Public Service and sent out in writing to all bidders.
5. When necessary, the Pre Bid conference can include a visit to the place **where goods are to be provided, the construction executed or the service delivered.**

**Section III
Reception of bids**

**Sub-section I
Process for the reception of bids**

**Article 64.
Essential bid elements**

1. The bids shall be presented accordingly to the requirements requested in the "Tender Documents", **elaborated** for each specific procedure.
2. The price is indicated in numbers, followed by its amount in full, prevailing in the case of disagreement the amount **written** in full.

**Article 65.
Set up the deadline for submission of bids**

1. The time frame for the submission of bids shall be set up accordingly to the type of procedure used and within the deadline established in the complementary rules, accordingly to the type of procedure applied.
2. The Public Service shall prorogate the initial deadline for an adequate period when there are justifiable reasons.

⁹⁸ "vincular" = linked, tied. **Check literal translation and intent of 63/3**

3. The prorogations that are determined according to the espoused in the last number (65/2), are useful to all bidders and therefore all shall be promptly and simultaneously communicated.

Article 66.

Submission and Registration of bids

1. The bids are submitted directly or by registered mail, and shall be received within the deadline and in the place, or places for their submission.
2. If there is a mention in the announcement or invitation, allowing sending by other communication means, namely fax or e-mail, whenever that is adequate and possible considering the volume or the type of documentation.
3. In the case of the last number, the acceptance of documents by fax or e-mail is subject to the requirements established in the rules and procedures on electronic business in force in the Country.
4. The reception of the bids shall be registered, making note of the date and hour of arrival and the order number of presentation, in the exterior envelope, as well as in the packages or envelopes.
5. The bids received shall be guarded in a secure place with limited access, only for authorized personnel.

Article 67.

Presentation

1. Each bidder can only present one single bid.
2. The cost for the presentation and submission are at the bidder expense, independently of the tender result.
3. The proposal is presented in an individual envelope⁹⁹, opaque, closed and separate, following the instructions indicated in the tender documents.

Article 68.

Period of Validity of the bids

1. The period of validity of the bids shall be sufficient to allow the comparison as well as to assess them and obtain all necessary approvals, in order that the contract can be signed during the referred period.
2. Each bidder shall submit their bid, as well as a tender guarantee valid for the period specified in the Tender Documents.

Article 69.

Prorogation of the period of validity

1. Exceptionally and before the end of the bid validity periods, the Public Service can request the bidders to extend the validity period of the respective bids for up to four weeks.
2. The bidder has the right to refuse the request without loss of the tender guarantee, but the validity of her/his bid will end in the date initially set up.
3. The bidder that accepts an extension of their proposal shall extend the tender validity period or present a new one covering the additional validity period, otherwise it is presumed as a refusal of the extension request.

Article 70.

Modification of bids

1. Except when it is stipulated in other way, the bidder can modify or withdraw the bid before the end of the period for the presentation of tender documents without losing the tender guarantee.

⁹⁹ cover >>> envelope

2. The bid modification or its withdrawal notification is effective when is received before the end of the presentation period of the tender documents.

Article 71.

Announcement or Invitation Closing and Respective Effects

1. Having passed the deadline for the presentation of the tender documents and having received bids, in the period indicated, the Public Service shall declare the closing, registering this action in writing.
2. A proposal received past the established deadline is returned to the bidder without opening, according to the procedures established.

Section IV

Tender Guarantee

Article 72.

Tender guarantee¹⁰⁰

1. Each bidder shall provide validity guarantee of their bid during the period established in the tender documents.
2. This guarantee can only be required up to the limit of 10% (ten percent) of the bid value and starts in the date of bid submission¹⁰¹.
3. The validity time of the tender guarantee shall be the period required for the bid assessment and the conduct of other procedures until the award of the contract.
4. This guarantee shall be returned to the bidders immediately if the contract has not been awarded.
5. The Public Service shall retain the tender guarantee presented by the bidder to whom it intends to adjudicate the contract, until it has been replaced by the performance guarantee.¹⁰²
6. The Public Service can convert the tender guarantee into a performance guarantee, in the case the bidder to which the contract has been awarded, not presented later than the deadline established, without detriment of his/her obligation to pay the difference between both guarantees.

Article 73.

Forms of Tender Guarantee

The submission of the tender guarantee can be requested in the way of a credit letter or guarantees of a bank or financial institution or security¹⁰³, suitable and according to the following rules:

- a) the requirement shall be asked equally to all bidders;
- b) in the tender documents shall be stipulated the conditions relative to the issuer or guarantor, as well as the terms and forms of guarantee, to be considered acceptable;
- c) the guarantees have to express a clause of irrevocability;
- d) in the case of a guarantee and the issuer fulfills the requirements established in the tender documents, it cannot be rejected based on the fact that it was issued by a natural or legal person with headquarters outside the Country.

¹⁰⁰ tender guarantee = bid security

¹⁰¹ presentation = submission

¹⁰² guarantee of execution = performance guarantee

¹⁰³ security = bond/ insurance/ surety

**Article 74.
Confirmation of the Guarantee Issuers**

1. The bidders have the right to request in writing to the Public Service the confirmation of the acceptability of a guarantee issuer and to receive a reply also in writing in the shortest possible period of time to this request.
2. This confirmation of acceptability doesn't prevent the Public Service rejecting the guarantee on the basis that the issuer or guarantor, accordingly to the case, has become insolvent or without credit.

**Article 75.
Loss of Tender Guarantee.**

1. The bidder loses the right to claim the return/ dissolution of a tender guarantee, when it exhibits conduct damaging to the Public Service, namely when:
 - a. withdraws or modifies the proposal during the bid validity period or after the contract has been awarded;
 - b. doesn't fulfill the payment of the contract performance guarantee, in the terms foreseen in the tender documents;
 - c. doesn't fulfill any other condition preceding the signature of the contract, specified in the tender documents;
 - d. without any justification, doesn't sign the contract by the date set up by the Public Service;
2. The declaration of losing a deposited guarantee and the causes, is notified in a timely manner in writing to the bidder.

**Article 76.
Discharge of a Tender Guarantee**

1. The tender guarantee shall be discharged¹⁰⁴ quickly when there ceases to be a reason to require their deposit.
2. The Public Service shall give back the guarantee document in a timely manner, after one of these facts having occurred:
 - a) the end of a tender guarantee;
 - b) the end of the procurement procedures without being awarded the procurement contract in favor of the bidder;
 - c) the withdrawal of the proposal, before the deadline for the submission of bids, except if the tender documents establish if the withdrawal is not allowed.

**Section V
Opening of the Sealed Envelopes¹⁰⁵**

**Article 77.
Opening Committee**

1. The Public Service that initiates the prequalification procedure or tender shall nominate a Committee responsible for opening the envelopes.
2. This Committee shall be composed by at least three employees of the Public service, between which one shall be nominated as its president.

¹⁰⁴ devoluted = discharged

¹⁰⁵ covers = envelopes

Article 78.
Public Act of Opening of the Envelopes

1. In the established date in the pre-qualification or tender documents, the Commission responsible proceeds to opening of envelopes.
2. Any interested parties can attend¹⁰⁶ this public ceremony without those present being allowed interventions¹⁰⁷
3. In the pre-qualification procedures, the act is initiated with the reading of the procedure identification, following by proceeding to opening the envelopes and immediately after is written the bidders list, within the sight of all present.
4. In the public tender, the act is initiated with the reading of the procedure identification, following by proceeding to opening the envelopes and immediately after, make the participants list with the prices offered, which is written within sight of all participants and read in a loud voice, making a copy of this list in a document to be provided to the Committee.
5. Following that, the Committee gathers all documents, giving them to the (Tender) Committee¹⁰⁸ or keeping them in a secure place until is delivered to the (Tender) Committee .
6. The Commission responsible for opening the envelopes shall deliver all documentation to the (Tender) Committee at the latest in the day following the opening.

Section VI
Tender Jury

Article 79.
Nomination and constitution of the Tender Committee

The jury is designated by the competent entity to initiate the procedure and is constituted, by at least three members, added a substitute member, one of which is nominated president and other as his/her substitute in the impediments, always protecting the jury's odd number.

Article 80.
Competence of the Tender Committee

The competencies of the Committee are:

- a) to accept or exclude the bidders, in a substantiated manner, based on the requisites required in the pre-qualification documents or tender documents, accordingly to the case.
- b) to decide on the bidders pre-qualification, in a procedure of this nature based on the requisites required in the Pre-Qualification Documents;
- c) to assess the bids and qualify the bidders, accordingly to the selection criteria that are defined in the tender documents;
- d) to conduct the assessment, choice and classification of bidders.
- e) to propose the bidder to be awarded with the contract.

Article 81.
Functions of the Tender Committee

1. The Committee is considered to be functioning starting from¹⁰⁹ the first working day following the opening of the pre-qualification or tender documents.

¹⁰⁶ assister = assist / attend/ watch

¹⁰⁷ rearranged; verify translation

¹⁰⁸ jury = tender committee = evaluation team

¹⁰⁹ after >>> starting from

2. The Committee can request a secretary to the named entity to write the meeting minutes in which shall be included the causes for the exclusion of bidders and to deal with all work expediently¹¹⁰

Article 82.
Admission and exclusion of bidders

1. In a private session, the Committee proceeds to the signature or official stamping of the tender documents, proceeding their analysis.
2. After the analysis, the Committee decides on the admission or exclusion of the bidders, as well as their qualification.
3. The criteria to be taken into account by the Committee are previously established in the pre-qualification or tender (documents), according to the case.

Article 83.
Reading of the Lists

Before finalizing the private session, the president of the Committee makes the list of the bidders admitted, as well as those excluded, explaining the reasons and the basis, albeit in a summarized manner.

Article 84.
Examination of the Bids

1. In the tender procedures, the jury proceeds to the examination of the documents in a private session.
2. The bids are excluded if:
 - a) they are presented by one single bidder¹¹¹;
 - b) they are not in conformity with the requirements expressed in the tender documents.
3. In the tender procedures, the President of the Committee then provides knowledge of the total price of each one of the bids accepted and the essential aspects of these.

Section VII
Assessment, choice and classification of the bidders

Article 85.
Assessment in the Prequalification Procedures

1. Based on the requisites requested in the pre-qualification documents, the Committee determines the pre-qualified bidders.
2. It is compulsory to make the final classification list and write the final minutes with the respective basis, individualized and that serves as the report of proceedings
3. This list is submitted to the Public Service and is published in the terms established in the article 89.

Article 86.
Assessment and Choice in the Tender Procedures

1. The Committee evaluates and classifies the bidders, accordingly to the requisites required in the Tender Documents, starting if possible, for bidder appraisal, in the following order:
 - a) professional knowledge;
 - b) technical capacities and experience;

¹¹⁰ clause rearranged

¹¹¹ should be "a bidder submits more than one bid" ? check intent

- c) financial capability.
- 2. Following, starts appraising the bids in the following order:
 - a) the deadline for the supply of goods, work execution or services delivery;
 - b) the quality of goods, construction work or services;
 - c) the preference applied to the national bidders or to the benefit of bids those involved local products;
 - d) the specifications and technical approvals, when required;
 - e) other elements required in the tender documents, namely the price justification note or the model presentation or the prototype of the material to be supplied.
 - f) the total price and the conditions of payment;
- 3. Then follows¹¹² the percentage application of the selection factors expressed in the tender documents, giving ranking to the bidders.
- 4. In the case of a draw, the adjudication shall always be done in favor to the lowest or economically favorable proposal, always when the bidder has passed the technical evaluation.
- 5. It is compulsory to do final list of classification and write the final minutes with the respective basis, individualized, serving as the report of proceedings
- 6. Without prejudicing the powers of the Contracts Committee on the matter, the jury shall take into account the provisions in the paragraphs b) and d) in the no. 5 of the article 60., for the purpose of judging the real capacity of the bidder, in the case of accumulating contract awards and therefore evaluating the eventual dominantly prejudicial position for competition and taking part in the contest¹¹³.

Article 87.

Analysis by the Contracts Committee and Other Authorities

- 1. When it is the competence of the Contracts Committee to ratify the jury decision, the report of the current proceedings shall be delivered to the president of this Committee, within three days maximum after the (Tender) Committee concluding its choice
- 2. In the same way, in the case of a decision by the Contracts Committee is to be ratified by superior entities, this shall be submitted within a period of seven days, commencing counting from the date of receipt of the report.
- 3. The (Tender) Committee composition is maintained until their bid award is ratified or rejected.
- 4. In the case the (Tender) Committee decision is ratified, the recommendation shall be submitted by the approving entity and as¹¹⁴ necessary, to the entity competent to sign the contract.
- 5. In the case the jury decision is rejected, the Contracts Committee shall provide the basis for their decision and submit to the jury for new analysis.
- 6. In the situation described in the last number (87/6), the jury can propose a second qualified bidder and thus successively.
- 7. The Contracts Committee may reject the jury decision based on the reasons referred in the no. 6 of the last article.

¹¹² "After, proceeds" >>> Then follows

¹¹³ accessing a tender >>> taking part in the contest ?

¹¹⁴ if necessary >>>> as necessary ??

**Article 88.
Rejection of all bids**

1. At any time before the award of the contract, the Public Service has the right to reject all bids submitted, having to communicate the decision to each one of the bidders, however not being obliged to justify those reasons.
2. In the case of invoking that right, the Public Service doesn't incur in responsibility toward the bidders.

**Article 89.
Publication of the decision**

1. The notice relative to the jury decision, containing the pre-qualified bidders or the intention of a contract award to one bidder, is posted in the usual places that the Public Service used to initiate the procedure, indicating in a summarized way, the reasons for the choice¹¹⁵.
2. After its publication, this notice shall stay visible to the public by at least five days in the pre-qualification procedures and in the tender procedures by at least fourteen working days,.

**Article 90.
Abandoned bid**

1. When the elected bidder qualified in the first place, after being appropriately notified, doesn't sign the contract or doesn't provide a performance guarantee by the date set for that process, the bid shall be declared as abandoned, with declaration of loss of the tender guarantee in favor of the adjudicating (awarding) entity.
2. In the situation of abandoned bid, the Public Service shall choose one of the variants to follow:
 - a) make use of their right to reject all bids, accordingly to the established in the present diploma;
 - b) select in conformity with the order of results obtained in the evaluation phase, other bids considered valid and conduct all procedures for acceptance and notification for later contract award.

**CHAPTER IV
PROCEDURES WITHOUT TENDER**

**Article 91.
Procedure by Request for Quotations**

1. In the procedures for request of quotations, the final bids shall be evaluated and compared ~~within~~ the Public Service itself, in order to choose, according to the followed general rules:
 - a) the offer¹¹⁶ with a lowest price, subject to any margin of preference applied to national bidders or to the benefit of the bid involving local products;
 - b) the offer¹¹⁷ with lower value evaluated based on criteria in specified the bid documents, criteria that shall be objective, quantifiable and expressed in monetary terms.

**Article 92.
Process for Procurement by Direct Appointment¹¹⁸**

1. The Public Service may choose direct appointment, in the following cases:
 - a) whenever there is a single goods supplier, work or services to be delivered, without another alternative or reasonable substitute;

¹¹⁵ review current practice in regard to providing reasons for the choice

¹¹⁶ bid>>>>offer

¹¹⁷ proposal>>>>offer

¹¹⁸ adjustment >>>>> appointment (settle/ agree on)

- b) when there is a supplier that has specific rights in relation to goods, construction work or services (and) no alternative or reasonable substitute exists;
 - c) when the contract has as an object an expert regime, investigation, experimentation, study or development or the acquisition or restoration of historical art works and it is not possible to tender, because the supplier is the only one capable and immediately available¹¹⁹ to achieve the objective;
 - d) when accordingly to another contract initially signed by a determined supplier, the adjudicatary responsible for the project design requires the purchase of vital items from a specific supplier as a condition of execution guarantee or of quality in the contract;
 - e) in the cases of emergency purchases;
 - f) in the cases of the supply of additional parts or parts substitution of a bidder which offer has already been accepted, in other contract signed;
2. For all operations, as well as circumstances that justify the use of this procedure, the correspondence shall be documented, in the terms established in the present decree and moreover complementary rules.

Article 93.

Limitations in the use of Direct Appointment Procedure.

- 1. In the procedure by direct appointment, the Public Service contacts directly with the future adjudicatary (awardee) in order to arrange¹²⁰ a contract with him/her, based on special reasons.
- 2. This procedure cannot be used in the cases foreseen the paragraph c) of no. 1 in the last article, when the same contract includes the production of goods in quantities that establish its business viability or the cost recovery with investigation and development;
- 3. In the case of paragraph d) of no. 1 in the last article, a new contract shall be made by direct appointment procedure within the authorized limits in the Article 9. of the present decree-law, when concurrently there are at least one of the following circumstances:
 - a) by reasons for the standardization of goods, construction work or services;
 - b) the need for compatibility with goods, construction work and technical services already received.

Article 94.

Direct Appointment for emergency purchases

- 1. The Public Service can use the procedure for emergency purchases, when:
 - a) there is an urgent need, unforeseen and not caused by the procurement beneficiary in relation to the construction works, goods or services, it not being practical to initiate tender procedures or any other procurement methods;
 - b) In the case of official declaration of catastrophe or emergency situation, which imposes the need to do construction work, supply goods or deliver services to avoid the loss of lives, loss of Government properties or other demands that require an urgent action in the public interest.
- 2. In this case, the Public Service can contract by direct appointment only the goods, construction work or services strictly necessary to remedy the emergency situation and provide an answer to the immediate shortages.

Article 95.

Process of the simplified procedures

- 1. The senior leadership of the entities mentioned in the paragraphs d), e), f) and g) of the article 15. can delegate to other leaders the realization¹²¹ of current expenses of periodical procurement, which are appropriately budgeted,

¹¹⁹ resonsible>>>>available

¹²⁰ celebrate>>>>create? establish?

¹²¹ realization = transacting/ payment

up to the amount of USD\$ 1,000 (one thousand United States Dollars), consultation being necessary with the Central Supply & Property on availability of goods or services.

2. The process of the simplified procedures is established in the complementary rules of the Ministry of Planning and Finance.
3. The leaders of the entities authorized to operate in a decentralized manner and according to the simplified procedures are in charge of managing and controlling the development of these operations and assume the responsibility to approve and sign the contracts in the sphere of their legal competencies, without detriment for those activities being delegated in the terms of the law.

CHAPTER V CLAIMS AND APPEALS

Article 96. Right to claim

1. The bidders that considered to be affected during the course of the procurement procedure have the right to present a claim to the Public Service, in the following causes:
 - a) the non-compliance with the rules established in the present decree or their complementary rules;
 - b) the non-compliance with the terms and conditions declared in the pre-qualification or tender documents;
 - c) the non-compliance of a decision adopted by the jury, which may have violated the legal rules in force.
2. In the cases of the paragraphs a) and b) of the last number, this claim can be done within five days, after the causal event¹²² occurring.
3. In the case of paragraph c) of the number 1, the deadline to the claims shall be posted in the pre-qualification or tender documents and also advertized in the decision publication notice.

Article 97. Competent Entity to Acknowledge the Claim.

The entities authorized to initiate procurement procedures are competent to acknowledge and solve the claims referred in the last article, in relation to the procedures that are their responsibility.

Article 98. Procedures of the Claim Presented

1. The Public Service shall receive all the claims presented and decide on their admission within a maximum of five days.
2. The only reason to declare it non - admissibility is their presentation after the established deadline.
3. Admitting the claim, within a period of two days, deciding on their truthfulness and later on the suspension of the procedure.

Article 99. Suspension Effects

1. When a protest is received from one of the bidders, the competent entity can suspend the procurement procedure within a period of five days¹²³
2. The competent entity can prorogate¹²⁴ the suspension term by a maximum period of five days when reasons exist that justify that decision.
3. Whenever there is not a decision conveyed in an administrative manner concerning the complaint or the hierarchical appeal, it cannot proceed to:

¹²² fact of origin >>>> causal event

¹²³ clauses rearranged

¹²⁴ prorogate = terminate/ conclude

- a) in the tenders, to the opening of the envelopes containing the bids;
 - b) in the negotiation procedure, to conduct the negotiation session;
 - c) to the adjudication/ award, in all procedures.
4. The judicial appeal doesn't produce suspension effects.

**Article 100.
Decision on the Claim Presented**

1. After having analyzed the case, the competent authority shall decide if accepts or rejects the claim presented, within a period of twelve days.
2. The decision on the claim presented shall be included in a document mentioning the reasons that were taken into account, as well as all pronouncements that are according to the law and will be immediately notified to the interested parties.

**Article 101.
Right to hierarchical appeal of claims**

1. The bidders not conforming with the decision taken in relation to their claim, can put in an hierarchical appeal to the competent authority, within five days, after the date of notification of the decision on their claim.
2. The hierarchical appeal can suspend the procedure for a maximum period of five days.

**Article 102.
Competent entities to decide on the hierarchical appeal**

1. The senior leaders of the ~~other~~¹²⁵ ~~sovereign~~ institutions, as well as the Ministers and the Secretaries of State, are competent to acknowledge and decide the hierarchical appeals in procurement matters, in the terms of the respective organic laws, with respect to the appeals ~~interposed~~ against the decisions adopted by:
 - a) the Heads expressly nominated and authorized by them to conduct procurement operations.
 - b) the senior leaders of the Autonomous Services, public entities and other entities granted with administrative and ~~delegated~~¹²⁶ financial autonomy
 - c) the other ~~groups~~¹²⁷ with capital participation of the State more than 50 % (fifty percent) that, although they don't have an entrepreneurial nature, follow eminent public purposes;
2. The Prime Minister is the competent entity to acknowledge and ~~solve~~ hierarchical appeals in procurement matters, presented against the decision adopted in the first instance to senior leadership of the remaining ~~sovereign~~ institutions, as well as the Ministers and the Secretaries of State.
3. In the cases that the Contracts Committee shall provide opinion for the contract approval, before resolving the hierarchical appeal there shall be a hearing by this Committee, in relation to the claim presented.

**Article 103.
Decision on Hierarchical Appeal**

1. After having analyzed the case, the competent authority shall decide if accepts or rejects the appeal presented, within a period of five days.

¹²⁵ Clarify "other": sovereignty>>>>sovereign

¹²⁶ subordinated>>>>delegated

¹²⁷ collective persons >>>>>groups

2. The decision on the appeal presented shall be included in a document, mentioning the reasons that have been taken into account as well as all the pronouncements that are according to the law, and will be notified immediately to all interested parties.
3. The contented appeal, judicial, doesn't produce suspension effects.

TITLE III SPECIAL AND TRANSITORY DISPOSITIONS

Article 104. Patrimonial Declaration

Each civil servant or Civil Service agent of the services in charge of conducting procurement operations, shall present a goods declaration that integrate their personal wealth/assets¹²⁸ and of their spouse or those who live as spouses, within the terms to be established in the joint decree¹²⁹ of the Ministry of Planning and Finance and the Ministry of State Administration.

Article 105. Professional Services Contracts, Design Work or Consultancy

The professional services to be provided by RDTL citizens, for the needs satisfaction of the Public Services, are regulated by the Civil Service Statute and their complementary rules.

Article 106. Special regimes.

All the Ministries that have within their scope of competence, the activities related to the number 3 of the article 2., , commencing counting after the present decree-law coming to force, shall submit within 90 days to the Council of Ministers the draft decree¹³⁰ on special legal regimes for procurement, maintaining for them a transitory character for the regime in force¹³¹

Article 107. Duty of Previous Consultation

1. Before proceeding, all Public services, decentralized or not, must¹³² consult with the State' Central Supply & Property Services, the availability of goods to be acquired.
2. The exposed in the last number is not binding on Public Enterprises.

Article 108. Complementary instructions

The Minister of Planning and Finance holds the power to issue complementary instructions of general character that are necessary to the implementation of the present decree.

Article 109. Changed Rules

The no. 2 of the article 16. and the article 36. of the Decree-Law no. 14/2003 of 24 September, regulates the Public Enterprises, changed to have the following writing:

"Article 16.

2. The public enterprises administer and use freely the goods that integrate their ~~wealth~~¹³³ without subjection to the rules relative to the private domain of the State, except the special dispositions mentioned in their statutes and in the Procurement Legal Regime, which shall be adjusted in their operations."

¹²⁸ patrimony >>>> wealth or assets

¹²⁹ diploma >>>> decree

¹³⁰ diploma >>>> decree

¹³¹ regime in force refers to this present decree

¹³² have the right to >>>> must

¹³³ patrimony >>>>> wealth ? assets ?

*Article 36.

Subsidiary Law

"The public enterprises are regulated by the present decree-law, by their respective statutes and in what hasn't been specially regulated by the rules of private law as well by the Procurement Legal Regime."

**Article 110.
Regime of Public Contracts**

The specific rules in regards to the public contracts are established in a decree of the Government.

**Article 111.
Administrative offenses**

The Government establishes in a decree the specific rules in regards to administrative offenses to the procurement legal regime and to public contracts.

**Article 112.
Repeal rule**

The Regulation 2000/10 of UNTAET on Procurement to the Civil Service of Timor-Leste is repealed and other dispositions which are contrary to that established in the present decree.

**Article 113.
Initiated procedures**

The procurement procedures already initiated at the time of coming to force the present decree-law, continue their process by the rules previously in force until their end.

**Article 114.
Implementation of a schedule decentralization**

1. The decentralization for procurement operations, foreseen in the present decree, starts to be implemented gradually¹³⁴ in the authorized entities, after the specific analysis of each one of them and through the approval of the Ministry of Planning and Finance.
2. The rules for a gradual entry process of the institutions into a decentralized procurement system can be established by ministerial ¹³⁵~~decree~~ of the Ministry of Planning and Finance.

**Article 115.
Coming to force**

The present diploma comes into force within sixty days after the its publication date.

Approved by the Council of Ministers in the 5th October 2005

The Prime Minister

Mari Bim Amude Alkatiri

The Minister of Planning and Finance

Maria Madalena Brites Boavida

Promulgated in
Publish it

The President of the Republic
Kay Rala Xanana Gusmão

¹³⁴ note that process of introduction will be gradual

¹³⁵ note that rollout requires ministerial decree

ANNEX 1

Additional definitions related to Procurement

Adjudicator: The Public Service that opens a tender aiming to celebrate (~~establish~~ **arrange**) a public contract. It is also called as "**adjudicating entity**".

Adjudicatory: The natural or legal person that received the adjudication (**award**) of a public contract. It is also called as supplier or provider.

Tender: The procedure preceding the public contract that is conducted in view to choose impartially the adjudicatory (awardee) by the jury.

Decentralization: For procurement [REDACTED], it is the competence that the Public Services **have** to initiate procurement procedures and to award public contracts, in view to their needs satisfaction.

Entities: For [REDACTED] of the procurement regime, any organ, public service institution or similar that have the capacity to celebrate public contracts.

Beneficiary entity: In the terms of the present **decree**, any entity, organ, public service institution or similar, that receives the goods supply or the services delivery.

Issuer or Guarantor: For effects of this decree, any natural or legal person that substitute the bidders **obligation** to provide or pay one of the guarantees mentioned in this decree-law.

Tender guarantees: The monetary amount or the equivalent financial instrument, required by the bidder, as protection by the Public Service, against risks derived from eventual withdrawals or modifications to the bids presented.

Guarantee of execution (Performance Guarantee): The monetary amount or the equivalent financial instrument required to the contract adjudicatory (**awardee**), as a protection of the adjudicator entity against the risks derived from eventual lacks in fulfilling the public contract.

Procurement operations: Any actions undertaken to achieve the supply of goods or services delivery.

Procurement procedure: All the process that is done in order to guarantee the acquisition of goods and services or the construction execution with public purposes.

Tender procedures: All the procedures in which the contract adjudication is done through a jury assessment.

Bid: It is considered as the offer submitted by the bidder in a procurement procedure, through fulfilling the requisites required in the law.

ANNEX 2

Amounts limit to initiate procurement operations, to evaluate and approve the signature of public contracts
(Article 15.)

Entity that initiates the procurement procedure		Ratification entities of adjudication and signature of Public Contracts	
Procurement Service by request of the interested Public Service		Revision	Prime Minister, in the contracts with a equal value or more than USD\$ 1.000.000
		Contracts Committee for contract equal or more than USD\$ 200.000	Minister of Planning and Finance, when equal or more than USD\$500.000, in consultation with the Prime Minister and the relevant Minister Procurement Service by delegation of the MPF between USD\$ 200.000 and less than USD\$ 500.000 in consultation with the relevant Minister
		Procurement Service by delegation of the MPF	
Government members and senior leadership of the remaining Sovereign Entities, up to USD\$ 10.000		Senior leadership of the remaining sovereign entities, Ministers and Secretaries of State	
Senior leaders of the Autonomous Services and competent public entities, up to USD\$ 10.000		The senior leaders of the Autonomous Services, the public entities and other organs granted with administrative and financial autonomy, including joint capital enterprises.	
Heads expressly nominated and authorized up to USD\$ 5.000		Heads expressly nominated and authorized by the senior leaders of the sovereignty organs and by the Members of Government, including all the remaining organs and public services not mentioned before	
Leasing with annual rent more than USD\$ 100.000	Procurement Service at the request of the interested Public Service	Equal to the levels established for the remaining procurement procedures Leasing of premises abroad needs the authorization of the MPF and MNEC.	
Leasing with a annual rent less than USD\$ 100.000	Interested Public Service		

ANNEX 3

REQUISITES FOR PRE-QUALIFICATION ANNOUNCEMENTS

The announcements for beginning a pre-qualification procedure, that is referred in the Article 50. Of the present decree-law, shall have at least the following information:

- a) Identity and address of the Public Service;
- b) Place and issuing date, and authorizing entity;
- c) Unchangeable declaration of the type of tender;
- d) Declaration that is a pre-qualification Announcement, as well as all the legal requisites required;
- e) The goods and services which procurement is submitting to a tender, including the general requisites of quantity and quality;
- f) Date and place foreseen to receive the procurement;
- g) The program of pre-qualification procedure, the means to obtain the pre-qualification documents, as well as the place where they can be obtained;
- h) The price of the form, if there is any, charged by the Public Service, in relation to the pre-qualification documents and forms.
- i) Languages in which the documents are available;
- j) Place and deadline for the submission of the pre-qualification documents;
- k) Notification date of the pre-qualification results;
- l) Any other information that the Public Service considers useful to provide about the tender or being regulated by the applicable specific rules or procedures.

**ANNEX 4
PRE-QUALIFICATION DOCUMENTS**

The pre-qualification documents, related in the article 51 . shall be at least related with the following:

- a) Instructions for the preparation and submission of pre-qualification requests;
- b) A summary of the main terms and general conditions in relation to the contract to be celebrated;
- c) Any documented evidences and other information that may be submitted by the bidders to demonstrate their qualifications and the required requisites in this decree-law;
- d) The documents relative to fulfill any other specific requisites that may be established by the Public Service in conformity with the rules in force.

**ANNEX 5
ANNOUNCEMENT REQUISITES FOR TENDER OPENING**

The Announcements for Tender Opening referred in the Article 57. of the present decree-law shall contain all the following minimum information:

- a) The identity and address of the Public Service that initiate the tender, place, issuing date and authorizing authority;
- b) Unchangeable declaration of the type of tender;
- c) Declaration that is an Announcement for Opening a Tender;
- d) Address, days and timetable to acquire the Tender program, which have not been publicized with the Announcement.

ANNEX 6

TENDER DOCUMENTS FOR BIDS PRESENTATION

The tender documents for bids presentation referred in the article 62. of this decree shall include, as a minimum, the following information:

- a) instructions for the preparation and submission of bids
- b) characteristics of goods and services the object of tender, requesting as minimal information in relation to:
 - 1) Quantity;
 - 2) Required quality requisites;
 - 3) Design specifications and other requisites necessary for the delivery and presentation of plans and other technical documents, in the case they are required;
 - 4) Descriptive models of technical characteristics of the goods and services to be purchased;
 - 5) Methods of quality analysis, to determine their compliance to the required specifications;
 - 6) Package;
 - 7) Brands and other signs and symbols.
 - 8) Price bids, that shall be submitted in a separate envelope.
9. Date and place foreseen for fulfilling the obligations;
10. Methods and procedure to assess the bidders qualification, as foreseen in the present decree-law and in the applicable rules and procedures;
11. Conditions of Guarantee of offer validity, in relation to the issuer and to the nature, way, amount and validity period and forms of satisfaction.
12. Conditions of performance guarantee in relation to the issuer and to the nature, way, amount and validity period and forms of satisfaction.
13. Any other information that the Public Service considers to be useful to the tender
14. A summary of the main terms and conditions necessary in relation to the contract to be celebrated not included in the pre-qualification procedure, if it is the case.
15. Any other documentary evidences or other information that shall be submitted by the bidders to demonstrate their qualifications and the remaining required requisites, if it hasn't been done a pre-qualification procedure;
16. Notary power that authorize whose presenting the bid [REDACTED], in the case it hasn't been demonstrated this power in other documents sent.
17. In the cases the bidder is an association, group or any other multi-personal entity, together with the submission of the bid shall be added the probation document which states assuming the responsibility by the actions of the common representative together with the constitution agreement.
18. Declaration on goods, work and services needed to be sub-contracted to other entities for fulfilling the contract main object, always when this opportunity is included in the conditions of bid submission.
19. Any other documents necessary to demonstrate the compliance of specific requisites established by the entity that initiates the procedures.

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT DECREE LAW N°.

11 /2005

Dated the of the

**ADMINISTRATIVE INFRACTIONS OF THE PROCUREMENT JUDICIAL REGIME AND OF
THE JUDICIAL REGIME OF THE PUBLIC CONTRACTS**

The control of the procurement and public contracts engagement have a close relation among them, therefore it is important to have coherent legal instruments with the purpose of guarantee the development of both activities.

The consolidation of an effective system on matter of procurement and public contracts¹, based on the principles of legality and transparency, require the establishment of norms capable of promoting the participants' discipline.

Due to the mentioned reasons it is important to define the conducts which constitute administrative infractions on this matter as well as the applicable measures case by case.

The Government decrees that under the terms of the no.1 paragraph e) article 115th and the no. 1 paragraphs a) and d) article 116th of the Constitution of the Republic to have value of law, the following:

**CHAPTER I
GENERAL DEFINITIONS**

**Article 1
Objectives**

The objective of the current law is to define the conducts that constitute infractions of the Juridical Regime of Procurement and Public Contracts, as well as establishing the processes applicable and the means of impugnation.

**Article 2
Scope of Application**

The current law applies to any person, single or collective, that participate in the proceedings of procurement and public engagement.

¹ Contractions >>> contracts

Chapter II OF THE ADMINISTRATIVE INFRACTIONS

Article 3 About the administrative infractions

Administrative infraction constitutes any action or omission against to the established rules on the Procurement Juridical Regimen, on the special regimens of the procurement, as well as with and Public Contracting² Regimen and their complementary norms.

Article 4 About the applicable measure to Civil Servants and agents of Public Administration

When a civil servant, or public administration agent, is detected as a possible violator of the Procurement Juridical Regimen or Public Contracting Juridical Regimen, the authority that is aware of the behaviour must **participate** that action to the competent authority, to establish a fact finding or disciplinary process, with the purpose of sorting the responsibilities according to what is established in the Statute of the Public Function.

Article 5 About the measures relative to the bidders or their representatives in a procurement proceeding

1. Any infringing practice performed by the bidder or his representatives or third parties directly related with the tender, can lead the application of the following measures:
 - a) exclusion of the bidder from the proceeding;
 - b) declaration of a ineligibility established for one period of 1 year,
 - c) declaration of a permanent ineligibility.
2. In the case of the number 1, the public service also should declare the nullity of the acts performed on the proceedings preceding the award of the contract if they benefit the bidder.
3. The higher administrator of the public service can declare the permanent ineligibility of the bidder to participate in the operations of procurement and public engagement, in his area of competence, in the case of convicting sentence, passed in final judgment motivated by facts directly related with the procurement and public contracting in the RDTL.
4. The higher authority of the public service, when exclude or declare ineligible any of the bidders, must **participate to** the Procurement Services.

Article 6 About the measures after the contract signature

1. When after the contract signature, will be proved one violation to the Procurement Juridical Regimen or the Contracting Juridical Regimen, determining to the contract's

² Engagement >>>> contracting

award the entity that exerts the representation of the public service must request to the court or the competent organ that the nullity of the contract be declared, without prejudice to claim the respective indemnifications.³

2. In the circumstances of the previous number, the public service can declare the loss of the Execution Guarantee, in the terms of the law.

Article 7

About the conducts with criminal characteristics

1. When it will be detected a violating conduct that also can have crime characteristics, is duty of the highest authority of the public service that started the procurement proceedings or that signed the contract, to request the intervention of the competent organ.
2. The public service can declare, the bidder, temporary ineligibility, as well as suspend the procurement proceeding, or suspend the effects of the contract, till the court decision.
3. In the case of existing against an official or agent of a public service founded suspicions of interference in a violating conduct mentioned on the no.1, such fact must be reported to the highest authority of the entity of the public service to which the official belongs.
4. The results of the process to impose to the bidder, the contractor or their representatives any of the matters foreseen in the present diploma as well as the results of the process to establish disciplinary responsibilities to officials and agents of the Public Administration, are independent from the results of the criminal process.

CHAPTER III

OF THE IMPUGNATION

Article 8

About the impugnation measures imposed to public service officials and agents

The public service officials and administrative agents participating in the proceedings of procurement or public engagement, can impugn the imposed disciplinary measures, in the terms of ~~the stated~~ on the Statute of the Public Function.

Article 9

About the impugnation of the measures imposed to the bidders

1. In the case of a bidder do not agree with the imposed measures, he can complain by administrative means⁴.
2. ~~Adopted one decision~~ about the complaint, the not agreeing bidder or contractor, can interpose hierarchic appeal under the terms of the present decree.
3. Both the accusation and appeal must be based on the concrete violation of at least one of the norms of the Procurement Juridical Regimen or the special regimen concerning to procurement matters, the Public Contracts Regimen or its complementary norms .

³ indemnizations >>>> indemnifications

⁴ through the administrative way >>> by administrative means

Article 10
About the complaints and hierarchic appeals

1. The other participants in the procurement proceedings can also be informed of the complaints and hierarchic appeals submitted, as well as of its final results.
2. If there is the case of a violation from which serious damages will result⁵ to the bidder, and if his claim is granted, in the same decision should be declared also the corrective measures to reinstate the legality, including the nullity of the damaging acts, if they anteceded the signature of the contract.

Article 11
Suspension and effects

The public service can decide if the submission of a complaint or a hierarchic appeal suspends the realization of the subsequent steps of the procurement proceedings or the execution of the contract.

Chapter IV
The complaint's order of the proceedings

Article 12
About the complaint's submission

1. The bidder or contractor **not resigned**, can submit a complaint before the authority that declared his ineligibility, or the application of any other measure under the terms of the present diploma.
2. The complaint is submitted in written, stating the reasons *de facto* and *de jure* which justify it, the evidence and his concrete claim.

Article 13
About the authorities competent to get knowledge of the complaint

1. The following entities are competent to know and decide in first instance about the complaints that are submitted to them,:
 - a) the directors of any sovereignty organ , the Ministers and Secretaries of State under the terms of the respective organic laws concerning the decision they adopt;
 - b) the directors expressly appointed and authorized to perform operations of procurement;
 - c) the directors of the Autonomous Services the public entities and other organs endowed with administrative and financial autonomy subordinate to them;
 - d) the higher directors of other collective entities in which the State's share in the capital stock is higher than 50% (fifty per cent) that although not being of entrepreneurial nature, pursue essentially public purposes and of which tutelage they are in charge.

⁵ rearranged

Article 14
Complaint formalities

1. The competent entity, under the terms of the previous article, should receive the interposed complaint and decide about its admission in a maximum of 5 days period;
2. The only case able to declare the inadmissibility of a complaint is the fact that it was submitted after the deadline. (out of the term).
3. The decision about the submitted complaint should be stated in a document that also state the justification reasons that were taken in account and should be notified immediately to the bidder.

CHAPTER V
Hierarchic appeal

Article 15
About Admissibility

1. The entity competent to decide should declare, or refuse, the admissibility of the hierarchic appeal in five working days counted after the date of receiving the appeal.
2. Can be considered as factors of inadmissibility of the hierarchic appeal the following:
 - a) the lodging of the appeal after the maximum time period (deadline);
 - b) an appeal that is a mere relodging of a previous appeal that did not contain the fundamental reasons to prove the reason for which it was lodged.
 - c) an appeal submitted with the sole intention of reproduce the complaint refused by lack of sufficient evidence related with the called *de facto* and *de jure* justifying reasons.

Article 16
About Authorities Competent to Decide the Hierarchic Appeal

The following are competent to know and decide about the hierarchical appeal interposed by a bidder concerning the matters of administrative violations of the Procurement Juridical Regimen, the procurement special juridical regimens or the Public Contracts Regimen.

- a) the Prime Minister against the decisions resolved in first instance by the highest directors of the sovereignty organs, as well as the Ministers and Secretaries of State;
- b) the directors of sovereign organs and, Ministers and Secretaries of State regarding the appeals interposed against decisions about complaints, adopted by directors of his organ, the directors of the autonomous services or other institutions under his tutelage.

Article 17
About the request for hierarchic appeal

1. The request for hierarchic appeal should be submitted in writing before the entity competent to know and decide about it, in five days time counted after the date of the notification of the complaint.

2. The hierarchic appeal should include its *de facto* and *de jure* justifying reasons, the violated legal disposition(s) and the concrete claim of the bidder with in appendix the evidence he intent to use.

Article 18
About the appeal's decision

1. Received the documentation, the competent entity has ten working days to examine it, as well as to decide about the concrete complaint of the bidder and resolve what would be pertinent according with the law.
2. The decision about the submitted appeal should include the mention of its *de facto* and *de jure* justifying reasons that were taken in account, and should be notified to the interested party immediately.
3. Against the decision of ineligibility confirmed after the hierarchic appeal is not suitable the administrative appeal.
4. The litigation appeal, judicial, do not have suspensive effects

CHAPTER VI
SPECIAL AND TRANSITORY DISPOSITIONS

Article 19
Complementary instructions

The Minister of the Planning and Finance has the faculty to issue complementary instructions that could be needed to the implementation of the present decree.

Article 20
The Initiated Proceedings

The proceedings already initiated at the moment of the present decree-law came into force will continue its formalities under the existing rules until its end.

Article 21
Revocatory Norms

All dispositions against that stated on the present diploma are revoked

Article 22
Coming into force

The current diploma will come into force sixty days after it has been published.

Approved in The Council Of Ministers at the 05 of October of 2005.
The Prime Minister

(Mari Bim Amude Alkatiri)

The Minister of the Planning and Finances

(Maria Madalena Brites Boavida)

Promulgated on the 08 of November of 2005

To be Published.

The President of the Republic

(Kay Rala Xanana Gusmão)

DEMOCRATIC REPUBLIC OF EAST-TIMOR

GOVERNMENT DECREE LAW Nº. 12 /2005

Dated the of the

PUBLIC CONTRACTS (RCP) LEGAL REGIME

The implementation of a Legal¹ Regime for² Procurement requires the establishment of norms that regulate Public Contracting³, which in turn permit there to be procurement activities, construction and services for public reasons within a legal framework.

Taking into consideration of harmonizing Procurement and Public Contracting processes and the current lack of legal norms regarding these issues, it is crucial to establish national legal norms that regulate the intervening parties to regulate such activities, taking into consideration the special need of these.

For the above-mentioned reasons the Government decrees that on the Terms of Article 115º. 1. c) and article 116º a) and d) of the Constitution of the Republic that the following shall be held as law.

**CHAPTER I
NORMS AND GENERAL PRINCIPLES**

**Section I
Principles and Competencies**

**Article 1
Objective**

The current law has as its main objective the intention to establish the basic rules applicable to public contracting in the República Democrática de Timore-Leste (RDTL).

**Article 2
Application of the Law**

The present basic norms are applicable to all public contracting written by the public entities of the Democratic Republic of Timor-Leste with the objective of structuring the supplying of goods, execution of public works⁴, or the execution of services with a public oriented intention.

**Article 3
Of the Public Contract**

Due to the foreseen effect of the current law, the definition of a public contract shall be held as a legally foreseen bilateral business agreement where at least one of the parties is a collective entity⁵ ruled by public law which has the objective of meeting by taking part in a procurement process that was initiated by a competent authority.

¹ Juridical >>> Legal

² regarding >>> for

³ Contraction >>> contracting

⁴ construction >>> works

⁵ person >>> entity

Article 4
Principle of the Contracted Value Unity

1. The amount of a public contract to be considered is the total cost of the acquisition of goods, construction of buildings or hiring of services.
2. The fractioning of a contract by an entity, with the intention of deducting from the regime of the foreseen law, is prohibited by law. This includes the act of dividing the sum of the total cost to various parts⁶ in order for any of them to be less than the limit of the amount established by law⁷

Article 5
Principles of Legality, Good Faith and Proportionability

1. In the execution of public contract the public entities should act within the law.
2. The parties should satisfy the demand for authenticity, good faith, and proportionability.
3. The contracts must clearly include well expressed, precise and equitable clauses.

Article 6
Competent Entities to Approve and Sign Public Contracts.

1. The public contracts should be approved and signed by the entities legally foreseen in law.
2. The following are entities that have the capacity enter into public contracts.
 - a) the Prime-Minister when the contracts involve the sum of USD\$1.000.000,00 (One million US Dollars), or higher;
 - b) the Minister of Planning and Finance;
 - c) the Contracts⁸ Committee;
 - d) the highest administrators of sovereign organs, the Ministers and Secretary of State, in the terms foreseen by organic law;
 - e) the administrators expressly nominated and authorized by that sovereign institution's highest administrators or the Minister or Secretary of State responsible for that institution.
 - f) the Highest Administrators of the Autonomous Services, public entities and other state organs endowed with administrative and financial autonomy.
 - g) other collective entities with a state participation of 50% (fifty percent) which have public utility even though they do not have profit seeking as an objective.
 - h) all the organs or Civil Service Institutions subject to the State Budget or financed mostly by it.

Article 7
Of the Amounts

The entities with the legal capacity to approve, ratify and sign public contracts with the sum of money in the contract are listed in Annex 2 of the Juridical Regime of Procurement.

⁶ shares >>> parts

⁷ rearranged/ split into two sentences : this clause refers to "splitting" of contracts, to avoid financial thresholds determining procurement mode

⁸ Contracting >>>> Contracts

Article 8
Minister of Planning and Finance Competences

The Minister of Planning and Finance has the following competences;

- a) the legal obligation to carry out Public Contracting and presenting to the Government with options and reports relative to the public contracting along with proposing the necessary⁹ corrective measures that should be adopted;
- b) providing ministerial bills, instructions and administrative acts necessary for the implementation of this law;
- c) analyze and decide about the approval of public contracts, within the capacity that is attributed to them by this law and other Government decisions.
- d) granting, individually or with other public entities, the public contracts that require a signature by current legislature;
- e) the ability to delegate to the Procurement Services the right to sign contracts that have a maximum amount of USD\$ 500.000,00 (Five Hundred Thousand US Dollars);
- f) the right to solicit for consultancy and possibly to annul any contract regardless of which phase of implementation they may be in, in order to harmonize the process with the legal procedure;
- g) any other competencies that have been attributed to him (her) by law or Government.

Article 9
Procurement Service Competences and Responsibilities

The Procurement Services will do the following in relation to public contracts:

- a) advise the Minister of Planning and Finance about the global politics of Public Contracting;
- b) take part in the activities related to the execution of the Governments policy concerning public contracting;
- c) sign the contracts whose¹⁰ approval and revision are also under their responsibility as¹¹ it is stated under the current law and also when there is an act of delegation from the Minister of Planning and Finance;
- d) administer the contracts signed at its level or whose administration is expressly delegated;
- e) review any complaints because of any contractual non-compliance while this responsibility is not expressly attributed to another entity;
- f) advise the Minister of the Planning and Finance the methodological parameters, procurement instructions and procedure manuals that should be provided for to aid the implementation of the current law;
- g) zeal for the implementation of the policy that manages public contracting;
- h) guarantee the protection of public interest on the approved contracts;
- i) conserve the documentation relative to signed public contracts during a five year period;

⁹ needed >>> necessary

¹⁰ who's >>> whose

¹¹ has >>> as

- j) promote periodical meetings and reunions in the public entities with the capacity to execute a decentralized procurement process in order to make the obligation of the policies and norms of public contracts;
- k) guarantee the preparation of specialized personnel for the areas dedicated to public contracting;
- l) gather and maintain, in an manner as accurate as possible, a registry and financial records to demonstrate the economic benefits;
- m) prepare information and financial reports adequately presented to show operations, resources and expenses related to public contracts and to present to the superiors at the established date;
- n) other competences that were attributed to the present law and their norms.

Article 10

Of the Public Contracts in case of Decentralization and Simplified Procedures

- 1. The administrators of the public entities authorized to execute decentralized procurement and who also use simplified procedures assume the responsibility of approving and signing the contracts under their legal competencies, without prejudice to those activities which are delegated to them under the law;
- 2. The Public Organs authorized to contract under a decentralized system are obligated to carry out the norms established for public contracting and have the following responsibility:
 - a) to submit monthly reports on the defined date, pertaining to the public contracting in the Procurement Sector;
 - b) to submit to the Procurement Service the annual evaluation of reports approved and signed during that year;
 - c) comply with the sub articles d), e), g), h), i), k), l), and m) of the previous article.

Article 11

Competences Delegation

- 1. The delegation of competences relative to the signing of the public contracts are only permitted when expressed by law;
- 2. The maximum superior¹² administrators of the public entities mentioned in sub articles d), e), f), g), and h) of article 6 which are responsible for the subordinated entities¹³ may delegate in a written form the competency to sign public contracts;
- 3. The delegated agencies¹⁴ may not re-delegate this competency in their turn;
- 4. The entity which carries out the delegation will not be exonerated of any responsibility of carrying out the law for the execution of the law by any of the delegate agencies;
- 5. In the contracts signed under delegated authority there should be a copy of the delegation orders.¹⁵

Section II

Of the Contracts Committee

Article 12

Composition

¹² maximum >>> superior

¹³ organisms >>> entities

¹⁴ agents >>> agencies

¹⁵ Note Well this requirement

1. The Contracts Committee is a consultative organ constituted in the terms of the current law and is integrated by a recognized professional appointed by the Prime Minister.
2. The Contracts Committee is integrated by the following people;
 - a) a representative of the Minister of Planning and Finance who presides the Committee;
 - b) four members representing Public entities, of which one must be designated to substitute the for president of the Committee in the case of his absence;
3. The members of the Contracts Committee are nominated for a period of two years, renewable any time the public entity that proposes them as a favorable opinion, and can be released from this responsibility if there is a justifiable reason for such decision;
4. In order to guarantee the execution of any contracts, five reserve members are designated so that they may take over in the case of any of the original members being absent.

Article 13 Competences

The Contracts Committee has the following competences:

- a) to analyze, approve or ratify, depending on the case, the proposal of signing of public contracts with a total value USD\$ 200.000,00 (Two Hundred Thousand US Dollars);
- b) to appraise financial, technical, juridical or social aspects relative to the projects being contracted and to pass a report to the Minister of Planning and Finance about their findings ;
- c) to recommend to the Government the adoption of the norms and good international practices;
- d) to recommend to the Government the Contractual policies that should be adopted by all public entities
- e) to recommend to the Government the Financial and Implementation policies that should be adopted by all public entities;
- f) to issue opinion statements on any complaints and appeals submitted by the bidders;
- g) any others that were specially granted by law.

Article 14 Working ways

1. The Contracts Committee will follow the norms established in this law and, except when there is a decree¹⁶ which is more precise, which has been approved by the Minister of Planning and Finance.
2. The Contracts Committee meets any time summoned by its President.

Article 15 Analyzes of Contract Award by the Contracts Committee and Other Entities

¹⁶ diploma >>>> decree

1. When the Contracts Committee or any other entities awards a public contract they have to forward a Procedure Report in the time foreseen in the Procurement Legal Regime (PLR).
2. A rejection by the Contracts Committee can only be based on a non compliance with the rules and procedures as established in article 87º do RJA (PLR), or on the requirements required on the tender documents.¹⁷

CHAPTER II TYPE OF PUBLIC CONTRACTS

Article 16 Type of contracts

1. The public contracts celebrated under the present decree, according to their object, can be :
 - a) supply of goods;
 - b) provision of services;
 - c) execution of works.
3. Each one of the contract types mentioned in the previous article can have other variations, according with the foreseen in the complementary norms to the present decree
4. By reasons of public interest, contracts related to selected goods, works or services can be awarded conferring special or exclusive rights, according to authorizations specifically granted by the competent entities or Public Services¹⁸

Article 17 Classification Criteria for Public Contracts

In the case of the supply of goods, provision of services, and construction or maintenance being included in a contract, the prevailing value will be used as basic criteria to determine the type of public contract as well as the applicable rules.¹⁹

Article 18 Public Contract for Supplying Goods

1. To the effects of the present law the public contract for supplying goods is a written contract, at onerous title, celebrated between the contractor and awarding entity, that has as objective acquiring goods by purchase, financing rental being or not leasing.
2. This contract may have as accessory options the commissioning, installation and maintenance of the goods.

¹⁷ examine this paragraph!!

¹⁸ Clauses rearranged

¹⁹ rearranged – the mode with the greater value determines the procurement mode (category) & contract applicable

Article 19
Of Public Contracts for the Renting of Real Estate

The renting of real estate²⁰ with public purposes is subject to the laws established in the present decree, the Law of the Juridical Regime of Procurement, and any and all laws regarding the renting of real estate in force in the country.

Article 20
Public Contracts for Provision of Services

1. To the effect of the present decree the contract for the acquisition of services has to be made in a written form in bona fide title in which the contracted party or a third sub contracted party is obligated to carry out the services that have been contracted for.
2. This contract can include supplying materials or the execution of small construction works due to the necessity of the services being contracted for.
3. The current article applies to health professionals especially to specialized medical doctors.

Article 21st
Public Contract for Hiring of Professional Services to work in
Conceptualization or Consultancy

1. To the effect of the present decree the contract for the acquisition of professional services of conceptualization or consultancy services has to be made in a written form in bona fide title in which the contracted party or a third sub contracted party is obligated to carry out the services that have been contracted for.
2. In the acquisition of such services the authors will assume the availability to execute the need corrections, until the expiration of the contract quality warranty period
3. To the effects of the present decree the following services are considered conceptualization:
 - a) projecting or planning the organization of territory, urbanism, or architectural projects;
 - b) projects in the areas of civil engineering and construction, and the setting up of means of transport;
 - c) in relation to information technology, the processing of data or statistical data;
 - d) in the area of law formulation which includes bills that have to be submitted to the sovereign organs or to juridical judgments;
 - e) any other project that has as purpose the design of a work of public interest, which employs highly specialized workers and specialized techniques.

Article 22
Of Public Contract for Construction Works

To the effects of the present diploma the Public Contract for construction is a written contract of the onerous type, where the contracted party agrees to carry out a group of actions, consisting in works in real estate, concerning its repairing, maintenance, or edification, or any other type of professional work of civil engineering, installation, decoration, finishing or other of similar nature which might include the project of the work and, or supply some materials required by the characteristics of work to be supplied

²⁰ state >>> estate

**Article 23
Of Sub Contracting**

1. The contractors may subcontract the goods, the works or the services to the accomplishment of the principal purpose of the contract any time they have that possibility included in the contract, and without additional costs to the awarding entity.
2. The contractor party answer before the awarding entity by which has subcontracted with third parties, as they are his own acts.

**Article 24
Of other Legal Instruments**

1. The competent Public Services may sign other legal instruments in the cases that the steadiness and continuance of the relationship with a selected supplier will advise the definition of terms that would be valid for longer than one year.
2. This instruments contain rules of a permanent character which must be complied by the parties, in a reiterated, and namely related with :
 - a) general contracting conditions for the supplying of goods, execution of works or providing services;
 - b) norms of general nature in relation to the quality, system controls of quality general condition of the delivering, packing, transport and other requirements.
3. The details of the prices, terms, quality and quantity must be defined in the signed public contract.
4. These instruments are subject to the same regime of approval and ratification as the Public Contracts and their signature does not represent a criteria of preference in the choice of bidders in case of public tenders.

**Chapter III
THE FORMALITIES OF THE PUBLIC CONTRACTS**

**Article 25
The Parties in a Public Contract**

The parties to a public contract include the Civil Service (Contractor) and the party to whom the contract would be awarded (the contractor).

**Article 26
Of the Contract Formalities**

1. The public contract must be in written and composed in the same language that was requested to the submission of the tender documents, being that, when the language used is English, then must also be signed one sample in one the official languages of RDTL.
2. On the contracts celebrated with national entities, should be used either Portuguese or Tetum.
3. The contract must be composed by the Civil Service department that started the process according to the specific rules set by the law, and with the compulsory use of the Standard Contract Forms, without prejudice of the need for adaptations in each case.

Article 27

Of the Contents of Public Contract

1.The content of a public contract should have the general conditions as was requested in the tender documents and should include at least the following basic aspects:

- a) identification of the parts;
- b) object of the contract;
- c) conditions and accomplishment terms of the parts obligations;
- d) the price and means of payment;
- e) penalties for non compliance;
- f) applicable judicial regime and competent court of law to judge possible disputes between the parts;

2. Each contract can have as many annexes as needed that are necessary to list quantities, due dates, and other details, being signed by the same persons that signed the contract forming constituent part of it to all legal purposes.

3. When both the parties to a public contract agree to alter the originally agreed, should sign the respective Supplement to the Contract stating the new agreed accord and other particularities.

Article 28

Of the Signing of a Public Contract

1.The public contract must be signed by the parties or their legal representatives during the time period which is expressed in the tender documents.

2.For the effects of the signing of the public contract, is understood that the legitimate representative of the Civil Service is the competent person as is defined in article 6, or in which has been delegated this competence or by the legitimate substitute legally appointed designation and expressly authorized for the effect.

3.Is considered as a legitimate representative of the contractor awarded who is documentally credited to that purpose.

4. Once set the date for the signature of the contract, if by an exceptional reason the competent could not sign, this circumstantial delay should be solved as soon as possible without cause any prejudice to the contractor.

Article 29

Of the Juridical Regime

1.The Juridical Regime applicable to the Public Contracts is stated in the Present Decree as well as other complementary that would be issued by the competent authority.

2.In the case of omissions, Common Law may be used in the interpretation and execution of the contract any time there do not go against what the norms stated in the previous number.

Article 30

Of the Simplified Contract

1.The Public Contract for the supplying of goods, execution of services or execution of works, can be celebrated exceptionally in a summarized format to solve an urgent and unforeseen case has long the value does not exceed USD\$ 1.000,00 (One thousand US Dollars).

2.The simplified contract is considered to be in effect the instant the parties have agreed upon the respective obligations, and the awarding entity should keep the documents concerning these operations, the authorization of urgent buying not foreseen and its payment;

3.The previous rule is not applicable to the acquisition of capital goods, or consultancy services, in which the contract should be always formal.

Article 31
The contract coming into force

1.The contract comes into force when signed by both the parties or their legal representatives.

2.During the period between the notification, and the date of coming into force of the contract neither the contractor nor the awarding entity can take any action that will interfere with the accomplishment of the pre-contractual terms already set in the documents of the tender.

CHAPTER IV
OF THE CONTRACTUAL GUARANTEES

Article 32
Of the Guarantee Types

1.Has part of the requirements to the awarding of the contract the Public Service can require to the awarded parties to provide the following guarantees:

- a) Guarantee of the execution of the contract;
- b) Guarantee of quality.

2.The lifespan of the guarantees should extend until the date indicate on the tender documents and in the contracts.

3.The contractor can demand, based in reasonable justification, the creation or existence of determined conditions under obligation of the public service or beneficiary entity as guarantee of the contract execution.

Article 33
Of the Guarantee of the contract execution

1.The Public Service has the faculty to require that the contractor the provision of a guarantee of the contract execution equivalent to a percentage of contract value, till the maximum of 15% (fifteen percent) .

2.This guarantee, when it is required, should be stated in the contract and have a useful lifespan and keep its vigency during the contract validity.

3.In the case of contracts with a value higher than USD\$ 10.000,00 (ten thousand US Dollars) the guarantee of execution should be required with compulsory character.

Article 35 (34??)
Form of the Guarantee

1.The payment of execution or quality guarantees, can be required in the form of credit letter or bank or suitable financing institution or insurer guarantees, or can be accomplished by retentions on the periodic payments, according what is stated in the contract.

2. In the tender documents and in the contract should be stipulated the conditions relative to issuer or warrantor, as well as the terms and forms of the guarantees, in order to be acceptable.
3. The guarantees must express the irrevocability clause.
4. In the case that the guarantee and the issuer fulfill the requirements established on the tender documents, it can not be refused on the ground that was issue by natural or legal²¹ person based abroad.

Article 36
Of the Certification of the Guarantee Issuer

1. The contractor should request to the Public Service to confirm the acceptability a guarantee or issuer and receive an answer as quickly as possible about this request.
2. This acceptability confirmation does not prevent the public service to refuse the guarantee on the ground that the issuer or warrantor as become financially insolvent or not suitable in matters of credit.

Article 37
Of the Devolution of the Guarantee

1. The guarantee should be returned as fast as possible when the reason for its deposit no longer exists.
2. The Public Service should return the guarantee document as fast as possible after one of the following occurs:
 - a) the compliance of the total obligations by both parties in the case of a guarantee of execution not converted in a quality guarantee;
 - b) the expiration of the guarantee term without producing²² the prejudice that intended to be repaired by it.

²¹ juridic >>> legal

²² produced >>> producing

Article 38
Of the loss of the contractual guarantee

1. The contractor loses the right to claim the restitution one of the contractual guarantees when occur in a prejudicial behavior to the public service, namely when:
 - a) he does not comply with any of the its contractual obligations by causes that can impute to him;
 - b) he does not submit the guarantee of quality in the pre-designated terms;
 - c) when it refuses to substitute goods, solve defects in the works or services, or execute the corrections required by the Public Service, as well as during the lifespan of the execution or quality guarantees.
 - d) there is place to a abolition of the contract due to reasons imputable to the contractor;
 - e) after the signature of the contract be verified a violation of the Procurement Juridical Regimen, the applicable special regimen, or from the Public Contracts Juridical Regimen, that was relevant in the awarding of the contract.
2. The declaration of the loss of the guarantee deposited and the respective justification, should be notified in writing to the contractor as soon as possible.

CHAPTER V
Of the Execution of the Contract

Article 39
Of the cession of the signed contract

1. Signed a contract the Public Service only exceptionally can accept the cession in favour of other person natural or juridical, even when the awardee as requested it based justified reasons concerning to the impossibility to fulfill the contract due to reasons not foreseen, inevitable and insoluble.
2. In this case the ceding awardee should also prove that the one that go to get become the awardee due to the cession, also has the same qualifications.
3. It is also the responsibility of the cessionary to prove its capacity to celebrate the public contract ceded to his favour and give the guarantees of execution and quality in the same terms required to the assigning.
4. The public service should register the cession, which may only happen once under penalty to be declared bee ineligible under the terms of the existing legislation concerning the procurement.

Article 40
Of the Responsibility of the Execution of the Public Contract

1. Both the public service, as the institution benefiting of the contract assume the responsibility of complying of their respective obligations as well as the exercise of the right to request to the contractor the accomplishment of his obligations.
2. In the case of non- fulfillment of the contract imputable to the Public Service or the benefiting institution the entity that signed the contract should adopt the needed measures to solve this situation as soon as possible.
3. When there is a non-fulfillment of the contract imputable to the contractor the granter public service should initiate the most adequate judicial proceedings or extra judicial proceedings avoid or recover the damages and prejudice to the public interests.

Article 41
Of Damages and Losses

- 1.The declaration of loss of any contractual guarantee and its encashment do not prejudice the right of the public service of demanding the payment of penalties and indemnizations due to damages and prejudices exigible according the contract .
- 2.The indemnisation by damages and prejudices would be claimable by the amount that exceed that collected, increased by the contractual guarantees and the exigible penalties.

Article 42
Of The Competent Court of Law

The disputes related to the public contracts are submitted to the court of law of the competent court of Timor-Leste without prejudice to the submission of the cause to arbitral tribunal when the same will be allowed in the terms of the law and the contract.

CHAPTER VI
SPECIAL AND TRANSITORY DISPOSITIONS

Article 43
Of the Complementary Instructions

The Minister of the Planning and Finances is endowed with the capacity to issue complimentary instructions that will be needed to the purpose implementation of the present Decree.

Article 44
Of the Legal Requirements Needed to Establish a Process

The public contracts have already signed or in process of being signed in the moment of the present decree-law coming into force continue to be subjected to the previous rules existing till its execution and the expiration of the period of validity of the guarantee of quality.

Article 45
Of the Revocatory Norms

The norms that are contradictory to that established in this Decree are revoked

Article 46
Coming into Force

The current diploma will come into force sixty days after it has been published.

Approved in The Council of Ministers at the 05 of October of 2005.

The Prime Minister

(Mari Bim Amude Alkatiri)

The Minister of the Planing and Finances

(Maria Madalena Brites Boavida)

Promulgated on the 08 of November of 2005

To be Published.

The President of the Republic

(Kay Rala Xanana Gusmão)

JORNAL DA REPÚBLICA
Official Publication of the Democratic Republic of Timor-Leste

Decree-Law No 14/2006
27 September

AMENDMENT TO THE PROCUREMENT LEGAL REGIME (PLR)

Considering the efficiency of assets purchase, works execution and services delivery decentralization, ruled by Decree-Law No 10/2005, dated 21 November, in assuring a good management of financial resources;

Taking into account that the updated predicted amounts must not affect good practices in provisioning procedures, but rather reflect adequate operations;

Therefore,

The Government, in pursuant to Section 115, number 1, item e) and Section 116, items a) and d) of The Constitution of Timor-Leste, hereby enacts as law, the following:

Article 1
Updated limits for decentralized supply operations

The Attachment 2 of Decree-Law No 10/2006, dated 21 November, approving the Procurement Legal Regime (PLR), shall read as the Attachment to this Decree and shall make part of it, increasing the limits established therein from \$10,000 to \$100,000 USD.

Article 2
Classification of Contracting Parties

Article 25 of Decree-Law No 10/2005, from 21 November, shall read as follows:

“Article 25

On the Record of Vendors and the Classification of Contracting Parties

1. *With the purpose of controlling information regarding vendors in general and contracting parties related to the public works sector, a Record of Vendors and a Record of Classifications are created and kept confidential by the Procurement Service, containing the following data:*
 - a) *The list of vendors and the classification of public works’ contracting parties, listed by specialization areas;*
 - b) *Data relating to assets vendors, services providers and contracting parties from the public works sector participating in procurement operations according to the provisions of the relevant specific rules;*
 - c) *Information on measures enforced on each of them.*

2. *Classification criteria, registration, records, and certificates on the contracting parties on the public works sector shall be established and issued by the Ministry of Public Works.*
3. *Public Entities with decentralized competences for procurement purposes may request information regarding the vendors and contracting parties related to the public works sector, to the Procurement Service of the Ministry of Planning and Finance during evaluation, pre-qualification or qualification phases to verify the accuracy of the data submitted by them.*
4. *Upon request of the interested parties, the Procurement Service may issue certificates of registration in both Records. "*

Article 3
Procurement through State Budget subventions

1. The Ministry of Planning and Finance shall coordinate with the relevant Ministries and relevant Public Services the necessary ruling for effective and immediate procurement in situations of emergency or unequivocal social interest.
2. During 2006/07 financial year and in case of Public Subventions, the maximum amount of \$50,000 USD referred to in Decree-Law No 10/2005, Section 43, number 1, regarding the Price Solicitation Procedures is raised to \$ 100,000 USD and such procedure is adopted as privileged criteria.
3. Under the same conditions and in the cases where Article 94 of said Decree-Law applies, the amounts to be transferred by public subvention shall be delivered to the beneficiaries in the smaller number of releases possible and in the shortest possible period and financial liabilities are to be assumed by the relevant Ministries and entities; nevertheless, the beneficiaries that fail to report their accounts are automatically inhibited from receiving public subventions for a period of up to one year, to be defined by the Commission.

Article 4
Conformity Audits

1. Procurement procedures shall be audited by the Ministry of Planning and Finance in cooperation with the Ministry's Procurement Service.
2. The external audit, in the scope of UNTAET Regulation No 13/2001 shall also cover the observance of the procurement principles and public contracting as provided in Decree-Law 10/2005 and Decree-Law No12/2005 dated 21 November.

Article 5
Sanctionary Regime and Public Contracting Regime

Provisions set in Decree-Law 10/2005 and Decree-Law No12/2005 dated 21 November are to be read in accordance to the present Decree-Law.

Article 6
Entry in Force

The present Decree-Law shall come into force the day after its publication in Jornal da República.

Approved in Council of Ministers on September 01, 2006

The Prime-Minister

(José Ramos Horta)

The Minister of Planning and Finance

(Maria Madalena Brites Boavida)

Promulgated on September 14, 2006

Let it be published

The President of the Republic

(Kay Rala Xanana Gusmão)



DEMOCRATIC REPUBLIC OF TIMOR-LESTE
IV GOVERNMENT

DECREE-LAW NO. 24 / 2008

OF

CHANGING THE PROCUREMENT LEGAL REGIME

The Procurement Legal Regime, approved by Decree-Law no. 10/2005, of November 21, sets the rules for the acquisition of goods and services by the State.

Considering the country's development, the State has been the drive for economic development by way of its investments on infrastructures and its operational expenses, which support a great part of local companies in their activity.

Since the approval of this legal regime, administration services have been strengthening their capacity in this area, therefore justifying some level of decentralization by the Ministry of Finance unto other ministries and other entities, enabling them to carry out some procurement procedures belonging to their respective services.

Consequently, despite the ongoing general revision of the procurement regime, it is believed that it is important to try to implement immediately some decentralization measures that may work as an experience and that will allow the Ministry of Finance to do away with a series of procedures that are easy to do but take time, an essential factor for handling more complicated purchase procedures.

Thus,

The Government decrees, under article 115.1 e) and article 116 a) and d) of the Constitution of the Republic, to prevail as law, the following:

Article 1
(Alteration to DL 10/2005, of November 21)

Articles 19, 20, 37, 43, 86, 91, 92 and 95 of Decree-Law no. 10/2005, of November 21, approving the Procurement Legal Regime, will now read the following:

"Article 19
Procurement decentralization

1. In conformity with the respective budget appropriation, the public entities mentioned in article 15.1 c), d), e) and f) have competence to carry out, in a decentralized manner, procurement operations up to the amount authorized by law and with the authorization of the Ministry of Finance.
2. The entities mentioned in the previous article may increase the respective decentralized procurement limit, by way of an accreditation procedure before the Ministry of Finance, under this article and the following one.
3. Entities authorized to carry out decentralized procurement operations shall comply with the provisions of this diploma and the respective regulation to be approved through ministerial diploma by the Minister of Finance.
4. Entities authorized to carry out procurement operations must:
 - a) Comply with the legal and regulatory rules concerning procedure processes;
 - b) Plan and evaluate procurement proposals, including complex and high risk acquisitions;
 - c) Approve purchases within the respective accreditation limits and issue procurement proposals over that limit to the Ministry of Finance;
 - d) Monitor and draft reports on procurement processes and procedures done;
 - e) Promote counselling to managers and other service elements;
 - f) Promote the training of staff in the procurement area;
 - g) Support the Ministry of Finance in the performing of its functions.

Article 20
Accreditation Process

1. The entities mentioned in article 15.1 c), d), e) and f) shall request to the Ministry of Finance the accreditation level adequate to their needs.
2. A procurement accreditation system, to be regulated through a ministerial diploma by the Minister of Finance, is created with the following maximum thresholds:
 - a) Degree 1 : USD \$ 100,000;
 - b) Degree 2 : USD \$ 250,000;
 - c) Degree 3 : USD \$ 500,000;
 - d) Degree 4 : USD \$ 1,000,000;
3. The request for accreditation and change of degree must be accompanied by a management plan, including an implementation calendar to be approved by the Minister of Finance.
4. Entities carrying out decentralized procurement must present to the Ministry of Finance a Procurement Annual Report, which must include a compliance report.
5. The Management Plan mentioned in paragraph 3 is inspected by the Ministry of Finance within 3 years after the respective approval or whenever so requested by the senior officer of the respective service.

Article 37

Admitted procurement procedures

Within the terms and conditions of the present diploma, procurement procedures may include the following types:

- a) Public tender, required for procedures equal or over US\$ 100,000 (one hundred thousand American dollars), where any interested party may submit a bid, provided it complies with the requirements set in the tender documents;
- b) Tender limited by pre-qualification, admitting only tenders by the parties selected in the pre-qualification procedure;
- c) Restricted tender, where only the parties invited may submit bids;
- d) Negotiation or proposals in two stages;
- e) By estimate request;
- f) By direct adjustment;
- g) By simplified procedure.

Article 43

Procedure by estimate request

1. The procurement procedure by estimate request is directed to at least three suppliers already known by the Public Service and may be used whenever the value of the contract is below US\$ 100,000 (one hundred thousand American dollars) for goods, works or services of lesser complexity, which do not require technical specifications prepared in advance.
2. In this procedure, the choosing of the grantee belongs to the Public Service itself, without the need for a tender.

Article 86

Evaluation and choosing in tender procedures

1. The main purpose of tender procedures is to select goods, services and works with the better quality/price ration, with the purchase price being only one criterion for choosing the grantee.
2. The cost/benefit ration implies comparing the costs and benefits of the alternatives. The best result for the Government must consider the costs and benefits during the economic life of the good, i.e. the total cost of each good, service, construction or consultancy during the respective time of useful economic life, not just the moment of purchase.
3. The essential criteria to be considered when analysing proposals, based on the best cost/benefit, are the following:
 - a) Technical and professional analysis, i.e. the susceptibility of the good or service to meet the functional and performance requirements, considering the following factors:
 - b) Meet the essential and desirable requirements;
 - c) Client service, including support and maintenance during the useful life of the asset;

- d) Quality assurance;
 - e) Capacity of execution;
 - f) Experience and previous performance;
 - g) Strategic questions, namely place and financial capacity.
4. Commercial analysis, i.e. the reliability of the bidder and the respective capacity to reduce risk by the State, considering the following factors
- a) Timorese nationality or association with Timorese persons, credibility and professional reputation;
 - b) Financial capacity;
 - c) Risk management, including insurance and use of authorized sub-contractors;
 - d) Conformity with the conditions of the contract;
 - e) Conflict of interests;
 - f) Historic record of commercial relations with the State.
5. Industrial and local development should also be featured as requirements in the announcements, with the bids being evaluated and classified according to the following impacts:
- a) Promotion of the industry and business capacity of Timor-Leste;
 - b) Support to Timorese small and medium companies in order to access the State purchase market, and capacity to provide and maintain goods during the respective useful life;
 - c) Number of jobs to be created for Timorese;
 - d) Level of skills and technology transfer;
 - e) Proportion of goods and services acquired locally;
 - f) Opportunities of regional and district development;
 - g) Local capacity building or programs supported by the candidate.
6. Financial analysis for the entire useful life of the good, i.e. the total cost of each service, good or construction during the respective economic life and not just the purchase price, thus avoiding cheaper or worse products or services that may end up costing more in the long run due to maintenance costs. This should take under consideration:
- a) Capital costs, including the price of purchase, installation, operation and training, including;
 - b) Working costs, namely salaries, maintenance, power and licences;
- These costs shall be reduced to a series of common factors in order to enable the rational comparing of bids.
7. Tenders over US\$ 100,000 require a commitment declaration by the bidders, underlining the commitment to create local employment and to transfer skills and technology to local workers, as well as the proportion of goods and services acquired at local level that should be included in the attachment to the contract with the grantee.

8. Procurement services shall develop procurement criteria based on the principles of this article, being adequate for tenders and creating numerical scales for these evaluation criteria. The financial analysis specifying costs does not count for the score. The general rules and specifications of each tender shall be featured in the documentation of every tender. The invitations to tender must also include specific evaluation criteria.
9. Bids must be submitted in two envelopes; envelope one concerns technical and professional criteria, commercial and industrial analysis and local development criteria. Envelope two shall contain the value of the bid.
10. Bidders shall be integrated in a final list based on their capacity to meet the requirements set for the criteria of envelope one. This demonstrates the Government's commitment to give top priority to quality rather than price, through the professional and technical capacity of the company, its commercial soundness and its capacity to improve the local and regional development of Timor-Leste. Only then will the jury consider the contents of financial cost included in envelope two.
11. Envelope two shall be open regarding bidders ranked one and two in the short list.
12. The chosen candidate shall be evaluated based on the compliance with the criteria set in envelope one and the price indicated in envelope two.
13. The Minister of Finance shall carry out periodic audits to verify the compliance with the procurement rules set in this article.

Article 91 **Procedure for estimate requests**

In procedures by estimate request, final bids must be evaluated and compared by the Public Service itself, so as to choose according to the following general rules:

- a) The bid with the lowest price, subjected to any preference margin applied to national bidders or seeking to benefit bids that involve local products;
- b) The bid with the best quality/price ration, from companies that have not failed in previous contracts with the State, show to be specialized in the area of activity to which they apply and have their tax obligations up to date.

Article 92 **On Direct Adjustment procurement**

The Public Service may opt for direct choosing in the following cases:

- a) Urgent cases jeopardizing public health and safety, as a result of unforeseen events;
- b) When there are no bids or no bids that meet the criteria set in the tender, or when the candidates do not meet the requirements for participation;
- c) When due to technical reasons there are no bidders;
- d) When the goods or services can only be supplied by one specific entity and when there are no reasonable alternatives in the market;
- e) For the additional supply of goods and services meant for replacing parts or for extending or continuing services for existing equipment, software, services or facilities,

where the replacing of the supplier would result in the acquisition of goods and services that did not meet the adaptability or compatibility requirements;

- f) When it concerns the obtaining of a prototype for an original good or service, or for purposes of limited experimentation, or when it is created for a particular contract of research, experience, study or original creation;
 - g) For the protection of patents, copyrights or other exclusive or intellectual property rights;
 - h) For goods acquired in a commodities market or for purchases under advantageous conditions, including innovating bids not requested;
 - i) As result of a design competition.
2. The documentation of every operation is mandatory, as well as of the circumstances justifying the use of the procedure.

Article 95 **On simplified procedures**

1. Senior officers or the entities mentioned in article 15 d), e), f) and g) may delegate unto other officers the realization of duly budgeted ongoing periodic procurement expenses, up to the amount of US\$ 5,000 (five thousand American dollars), without exemption from consulting the availability of goods or services by the Patrimony Supply Central.
2. The proceedings for simplified procedures are set in the complementary rules of the Ministry of Finance.
3. Officers of entities authorized to operate in a decentralized manner and according to simplified procedures are charged with managing and controlling the development of these operations, and are responsible for approving and signing contracts within the scope of their legal competences, without prejudice to the activities they may delegate under the law."

Article 2 **Negotiations for purchases over US\$ 250,000**

A new article 37-A is created, reading the following:

"Article 37 - A **Negotiations for purchases over US\$ 250,000**

1. In procurement procedures over US\$ 250,000 it is possible to negotiate prices with bidders who meet the technical requirements advertised in the contract, in order to achieve the best possible solution and commercial contract.
2. The negotiations mentioned in the previous paragraph may include the following aspects, in addition to price:
 - a) Additional increased value options;
 - b) Specific contract management schemes;
 - c) Staff responsible for the various stages or contractual commitments;

- d) Possibility to transfer intellectual property;
 - e) Guarantees.
3. Negotiation proposals, whenever done to more than one bidder, must be exactly equal and always in writing.
 4. The negotiations indicated in this article cannot change the scope or purpose of the tender, lest they be considered void."

Article 3
Ongoing procedures and contracts

Ongoing procedures and public contracts already signed or being signed at the time the Present Decree-Law enters into force remain subjected to the rules applicable before its execution and to the term of quality assurance.

Article 4
Prevalence

The articles now changed prevail over all others of the diploma, should any situation of doubt of interpretation or lack of consonance arise.

Article 5
Repeal

1. Article 93 of Decree-Law no. 10/2005, of November 21, approving the Procurement Legal Regime, is hereby revoked.
2. Attachment 2 to Decree-Law no. 10/2005, of November 21, approving the Procurement Legal Regime, is altered to read as set in the attachment to the present diploma.

Article 6
Republication

The full version of Decree-Law no. 10/2005, of November 21, in its updated version, is published as an attachment to the present diploma.

Article 7
Entry into force

The present diploma enters into force on the day immediately after its publication.

Approved by Council of Ministers on

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Finance,

Emília Pires

Promulgated on

Let it be published.

The President of the Republic,

José Ramos-Horta

ATTACHMENT 2

**Threshold amounts to start procurement operations and to evaluate and approve
the signing of public contracts
(Article 15)**

Entity starting the procurement process		Bodies ratifying the attribution and signing of Public Contracts	
Procurement Service under request by the interested Public Service		Revision	The Prime Minister, for contacts equal or over US\$ 1,000,000
		Contract Committee for contracts equal or above US\$ 200,000	The Minister of Planning and Finance, for procedures up to US\$ 1,000,000 The Procurement Service, under delegation of the MoPF, from US\$ 200,000 to US\$ 1,000,000
		Procurement Service through delegation by the MoPF	
Government Members and senior officers of the further Sovereignty Bodies, up to US\$ 10,000 or up to US\$ 1,000,000 in the cases listed in article 20		Senior officers of the further sovereignty bodies, Ministers and Secretaries of State	
Senior officers of Autonomous Services and competent public entities, up to US\$ 10,000 or up to US\$ 1,000,000 in the cases listed in article 20		Senior officers of Administrative Services, public entities and other bodies with administrative and financial autonomy, including mixed capital companies	
Managers expressly appointed and authorized up to US\$ 5,000		Managers expressly appointed and authorized by the senior officers of the sovereignty bodies and by Government Members, including all other public bodies and services not mentioned before	
Renting with annual rent equal or above US\$ 100,000	Procurement Service under request by the interested Public Service	Equal to the thresholds set for the further procurement procedures The renting of real estate abroad requires authorization by the MoPF and the MFAC	
Renting with annual rent under US\$ 100,000	Interested Public Service		



IV CONSTITUTIONAL GOVERNMENT

DECREE-LAW NO. 3/2010

OF

Organic of the Procurement Monitoring Commission and of the Procurement Technical Secretariat

Decree-Law no. /2010 of , which altered the Procurement Legal Regime approved by Decree-Law no. 10/2005 of 21 November, created the Procurement Monitoring Commission and the Procurement Technical Secretariat.

The Procurement Monitoring Commission and the Procurement Technical Secretariat are created as a result of the decentralization of procurement procedures, seeking to enable better service delivery to users and to achieve efficiency gains and adequate transparency befitting a State procurement process.

Taking into consideration the importance of these structures within the scope of State procurement, it is urgent to approve the Organic of the Procurement Monitoring Commission and the Procurement Technical Secretariat, setting their respective structures, powers and duties.

Thus,

Under article 115.3 of the Constitution of the Republic, the Government decrees the following, to prevail as law:

CHAPTER I
PROCUREMENT MONITORING COMMISSION

Article 1

Mission

The Procurement Monitoring Commission, henceforth called Commission, is the service responsible for verifying and monitoring the implementation of procurement procedures and the execution of projects, as well as for carrying out the final assessment of procurement procedure outcomes.

Article 2

Duties

1. The Commission is namely responsible for:
 - a) Monitoring and verifying the implementation of all State procurement procedures,
 - b) Monitoring and verifying the execution of projects,
 - c) Assessing outcomes,
 - d) Any other tasks given to it by law.
2. The Commission reports to the Prime Minister or to the person delegated by him through dispatch.

Article 3

Structure

1. The Commission consists of expert officers with recognized professional experience in the areas of procurement, law, finance and commerce, appointed through dispatch by the Prime Minister.
2. The Commission may also invite members of the civil society and the private sector to participate as observers.

3. The Commission is headed by a Speaker, seconded for two years through dispatch by the Prime Minister or the person upon whom he delegates this power.
4. Subject to the present diploma, the Prime Minister or the person upon whom he delegates this power is responsible for approving through dispatch the regulation of the organic and functional structure of the Commission.

Article 4

Support to the Commission

1. The Commission may hire specialized assistance, either through individual working contracts or requisition, in the case of civil servants, to support its verification and monitoring work.
2. The Commission may hire specialized officers from a specific area whenever particular procedures justify it.

CHAPTER II

PROCUREMENT TECHNICAL SECRETARIAT

Article 5

Mission

The Procurement Technical Secretariat, henceforth called PTS, is responsible for conducting procurement procedures for projects costing at least USD 1,000,000 (one million dollars), as well as for monitoring and providing technical assistance to the remaining procedures done within the scope of all public entities.

Article 6

Tasks

1. The PTS has the following tasks:
 - a) Provide technical support and advisory in procurement procedures up to USD 1,000,000 (one million dollars);
 - b) Carry out procurement procedures above USD 1,000,000 (one million dollars);

- c) Collaborate with the Procurement Monitoring Commission;
 - d) Any others given to it by law.
2. The PTS reports to the Prime Minister or to the person delegated by him through dispatch.

Article 7

Structure

1. The PTS consists of expert officers with recognized professional experience in the areas of procurement, law, finance and commerce, appointed through dispatch by the Prime Minister or the person upon whom he delegates this power.
2. The Secretariat is headed by a director, seconded for two years through dispatch by the Prime Minister or the person upon whom he delegates this power, after deliberation by the Council of Ministers.
3. Subject to the present diploma, the Prime Minister or the person upon whom he delegates this power is responsible for approving through dispatch the regulation of the organic and functional structure of the PTS.

Article 8

Support to the PTS

The PTS may hire specialized assistance, either through individual working contracts or requisition, in the case of civil servants, to support it in its tasks.

CHAPTER III

FINAL PROVISIONS

Article 9

Repeals

1. Article 13 of Decree-Law no. 13/2009 of 25 February, approving the Organic of the Ministry of Finance, is hereby repealed.

2. Subsection III of Ministerial Diploma no. 1/2009 of 30 April, approving the organic of the Directorate General of State Finance of the Ministry of Finance, is hereby repealed.
3. All other provisions that contradict the present diploma are also repealed.

Article 10

Entry into force

The present diploma enters into force on the day after its publication in the Journal of the Republic.

Approved by the Council of Ministers on 3 February 2010.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Finance,

Emília Pires

Promulgated on

Let it be published.

The President of the Republic,

José Ramos-Horta



IV CONSTITUTIONAL GOVERNMENT

DECREE-LAW NO. 1/2010 OF

CHANGING THE PROCUREMENT LEGAL REGIME

The Procurement Legal Regime approved by Decree-Law no. 10/2005, of 21 November, sets essential rules for the country, namely rules concerning the acquisition of goods and services by the State.

It is urgent to implement some measures to decentralize procurement procedures and promote the development of the Nation.

Local development shall be promoted through the contracting of construction works to local companies, thereby promoting know-how and accountability. Local people shall be able to participate in the monitoring of construction works, as they will be the ones who will use the completed infrastructures. In this way, national businesspersons themselves are encouraged to have better performance and to develop their companies in healthy competition. This will also favour the creation of new local companies.

This decentralization measure is another measure contributing to the decentralization of the central Government and to the increase of confidence by the population in the efficiency of local and municipal administration.

Thus,

Under articles 115.1 (e), 116 (a) and 116 (d) of the Constitution of the Republic, the Government decrees the following to prevail as law:

Article 1

Change to Decree-Law no. 10/2005, of 21 November

Articles 2, 15, 21 and 92 of Decree-Law no. 10/2005, of 21 November, approving the Procurement Legal Regime, will now read the following:

“Article 2

Scope

1. The scope of the present diploma covers procurement procedures by public services through the State Budget or through other financial resources owned or controlled by them.
2. This procurement legal regime applies to all activities concerning the acquisition of goods and services, as well as the execution of works for public purposes.
3. Subject to the application of the general principles of the present decree-law, the following procurement procedures obey the rules of their special legal regimes:
 - a) Concerning equipment and articles of an essentially military, police or Intelligence nature;
 - b) Declared secret or the object of official secrecy;
 - c) Subjected to special security measures under the applicable legislation or international rules;
 - d) Concerning competences of the Autonomous Medical Stores;
 - e) Any others that the Government decides to regulate separately.
4. Expenses concerning acquisition of goods, execution of works or delivery of services, under the present diploma, as well as one subjected to one of the special regimes, are covered by the regime set for the greatest financial amount.
5. RDTL diplomatic and consular representations and permanent missions abroad shall follow the principles set in the present legal regime, with the due adaptations, to be set in a joint diploma by the Ministry of Finance and the Ministry of Foreign Affairs.
6. Government expenses with construction and public works up to USD 250,000 (two hundred and fifty thousand American dollars) are done through special procedures for the contracting of works to local companies placed in the sub-districts.

7. The matter indicated in article 2.6 is regulated by Government diploma.

Article 15

Entities entitled to authorize procurement procedures

1. The following entities are entitled to approve contracts prior to the signature of the responsible minister:
 - a) In contracts over USD 3,000,000 (three million American dollars) – the Council of Ministers;
 - b) In contracts between USD 1,000,000 (one million American dollars) and USD 3,000,000 (three million American dollars) – the Prime Minister, who may delegate this authority in another person;
2. The following entities are entitled to authorize procurement procedures and sign the respective contracts up to USD 1,000,000 (one million American dollars):
 - a) Heads of sovereignty bodies, with the possibility of delegation;
 - b) Ministers and secretaries of State, according to their respective organic laws, with the possibility of delegation;
 - c) All other public bodies and services subjected to the discipline of the State Budget or funded mostly by it.
3. (*Repealed*).

Article 21

Delegation of competences

1. The delegation of competences in terms of procurement is only allowed when expressly authorized in the present Decree-Law.
2. The entities listed in articles 15.1 (b) and 15.2 (a) and (b) may delegate competence for procurement procedures, in writing.
3. A person upon whom competences are delegated may not sub-delegate unto others.
4. Delegating entities are not exonerated from the responsibility to comply with the law in every procurement procedure done by the subordinated bodies or entities upon which authority was delegated.

Article 92

Procedures for Direct Adjustment procurement

1. The Public Service may opt for direct selection in the following cases:
 - a) Urgency as a result of an unforeseen situation, endangering public health and safety;
 - b) When there are no bids or no bids that meet the criteria set for the tender, or when the candidates do not meet the requirements for participation;
 - c) When there is no competition for technical reasons;
 - d) When the goods and services can only be provided by a specific entity and when there are no reasonable alternatives in the market;
 - e) For the additional provision of goods and services meant to replace parts or to extend or continue services or goods regarding existing equipment, software, services or facilities where the replacing of the supplier would result in the acquisition of goods and services that would not meet the adaptability or compatibility requirements;
 - f) When it concerns the obtaining of a prototype for an original good or service, for purposes of limited experimentation or created for a particular set of original research, experimentation, study or creation;

- g) For the protection of patents, copyrights and other exclusive or intellectual property rights;
 - h) For goods acquired in the commodities market or purchases of heavy, specialized or bulk equipment, for reasons of convenience and under advantageous conditions, subject to the approval of the Council of Ministers;
 - i) As a result of a competition;
2. All operations, as well as the circumstances justifying the use of this procedure, must be documented”.

Article 2

Repeal of article in Decree-Law no. 10/2005, of 21 November

Articles 19 and 20, as well as Attachment II to Decree-Law no. 10/2005 of 21 November, are hereby repealed.

Article 3

Addition to Decree-Law no. 10/2005, of 21 November

Article 23-A is hereby attached to Decree-Law no. 10/2005 of 21 November, reading the following:

“Article 23-A”

Procurement Monitoring Commission and Procurement Technical Secretariat

1. The Government creates the Procurement Monitoring Commission, under the guidance of the Council of Ministers or the body delegated by it, appointed by dispatch from the Prime Minister and having the following duties:
 - a) Monitoring process implementation;
 - b) Monitoring project execution;
 - c) Evaluating outcomes.
2. The Government creates the Procurement Technical Secretariat, with competences in the area of procurement projects over USD 1,000,000 (one million American dollars), under the

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guidance of the Council of Ministers or the body delegated by it, appointed by dispatch from the Prime Minister.

Article 4

Entry into force

The present diploma enters into force on the day after its publication.

Approved by the Council of Ministers on 20 January 2010.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Finance,

Emília Pires

Promulgated on

Let it be published.

The President of the Republic,

José Ramos-Horta

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

DECREE LAW

15/2011

4.a Amendment to Decree-Law No. 10/2005 of 21 November, which approves the Legal Regime for Procurement.

The Legal Regime for Procurement, approved by Decree-Law No. 10/2005 of 21 November, as amended by Decree-Law No. 14/2006 of 11 October, by Decree-Law No. 24/2008 of 23 July, and by Decree-Law No. 1/2010 of 18 February, establishes an essential normative for the country as it provides for rules for acquisition of goods and services by the State.

Law No. 1/2011 of 14 February, which approves the State Budget for 2011, established the Infrastructure Fund as well as the Human Capital Development Fund. The Boards of Administration of such Funds shall be the entities responsible for their respective operations and, as such, they shall also be responsible for the approval of procurement procedures for projects falling under their purview.

It is in this context that the need arises to amend the Legal Regime for Procurement, with the objective of including two new entities responsible for the approval of procurement procedures relating to infrastructure and human capital development projects and programmes. This will be advantageous in terms of accountability and transparency insofar as the use of public funds for developing the Nation is concerned.

Thus,

Pursuant to subparagraph e) of article 115.1 and subparagraphs a) and d) of article 116 of the Constitution of the Republic, the Government enacts the following to have the force of law:

Article 1

Amendment to Decree Law No. 10/2005 of 21 November

Articles 15 and 21 of Decree-Law No. 10/2005 of 21 November, which approves the Legal Regime for Procurement, as amended by Decree-Law

No. 14/2006 of 11 October, by Decree-Law No. 24/2008 of 23 July, and by Decree-Law No. 1/2010 of 18 February, shall now read as follows:

“Article 15

Entities with powers to authorise procurement procedures

1. The following entities shall have the power to approve the procurement procedures before the signature of the contract by the relevant minister:
 - a) The Council of Ministers, for procurement procedures entailing an amount in excess of USD 5,000,000 (five million American dollars);
 - b) The Infrastructure Fund’s Board of Administration, for procurement procedures entailing an amount between USD 1,000,000 (one million American dollars) and USD 5,000,000 (five million American dollars) included in the framework of the Infrastructure Fund;
 - c) The Human Capital Development Fund’s Board of Administration, for procurement procedures entailing an amount of up to USD 5,000,000 (five million American dollars) included in the framework of the Human Capital Development Fund;
 - d) The Prime Minister, with powers to delegate, as regards the remaining procurement procedures entailing an amount between USD 1,000,000 (one million American dollars) and USD 5,000,000 (five million dollars American dollars).
2. (...)
 - a) (...)
 - b) (...)
 - c) (...)

Article 21
Delegation of powers

1. (...)
2. The entities referred to in subparagraph d) of article 15.1 and in subparagraphs a) and b) of article 15.2 may delegate powers for carrying out procurement procedures in writing.
3. (...)
4. (...)”

Article 2
Revocation

Article 23-A of Decree-Law No. 10/2005 of 21 November, as amended by Decree-Law No. 14/2006 of 11 October, by Decree-Law No. 24/2008 of 23 July, and by Decree-Law No. 1/2010 of 18 February, is hereby revoked.

Article 3
Entry into force

The present Decree-Law shall enter into force on the day after its publication.

Approved by the Council of Ministers on 16 March 2011.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Finance,

Emília Pires

Enacted on 23 March 2011

For publication.

The President of the Republic,

José Ramos-Horta



IV CONSTITUTIONAL GOVERNMENT

DECREE-LAW NO. /2011 OF

4th Alteration to Decree-Law no. 10/2005 of 21 November, approving the Procurement Legal Regime

The Procurement Legal Regime approved by Decree-Law no. 10/2005 of 21 November and changed by Decree-Law no. 24/2008 of 23 July and by Decree-Law no. 1/2010 of 18 February, sets essential rules for the country, namely rules concerning the acquisition of goods and services by the State.

Law no. 1/2011 of 14 February, approving the 2011 State General Budget, created the Infrastructure Fund and the Human Capital Development Fund. The Administration Boards of these Funds will be the entities responsible for their operations and consequently they will also be responsible for approving procurement procedures concerning projects under their competence.

Therefore it becomes necessary to change the Procurement Legal Regime so as to include two new entities responsible for approving procurement projects concerning infrastructure and human capital development projects and programs. This will enable improvements in terms of accountability and transparency in the spending of public monies towards the development of the Nation.

Thus,

Under sections 115.1 (e), 116 (a) and 116 (d) of the Constitution of the Republic, the Government decrees the following, to prevail as law:

Article 1

Change to Decree-Law no. 10/2005 of 21 November

Articles 15 and 21 of Decree-Law no. 10/2005 of 21 November, approving the Procurement Legal Regime, in the wording given to it by Decree-Law no. 14/2006 of 11 October, Decree-Law no. 24/2008 of 23 July and Decree-Law no. 1/2010 of 18 February, will now read the following:

“Article 15

Entities entitled to authorize procurement procedures

1. The following entities are entitled to approve procurement procedures prior to the signing of the contract by the relevant minister:
 - (a) In procedures over \$5,000,000 (five million dollars) – the Council of Ministers;
 - (b) In procedures between \$1,000,000 (one million dollars) and \$5,000,000 (five million dollars), included within the scope of the Infrastructure Fund – the Administration Board of the Infrastructure Fund;
 - (c) In procedures up to \$5,000,000 (five million dollars), included within the scope of the Human Capital Development Fund – the Administration Board of the Human Capital Development Fund;
 - (d) Regarding other procurement procedures between \$1,000,000 (one million dollars) and \$5,000,000 (five million dollars) – the Prime Minister, who may delegate this authority unto another person.
2. (...)
 - (a) (...)
 - (b) (...)
 - (c) (...)

Article 21

Delegation of competences

1. (...)
2. The entities indicated in articles 15.1 (d), 15.2 (a) and 15.2 (b) may delegate in writing the competence for carrying out procurement procedures.
3. (...)
4. (...)”

Article 2

Repeals

Article 23-A of Decree-Law no. 10/2005 of 21 November, in the wording given to it by Decree-Law no. 14/2006 of 11 October, Decree-Law no. 24/2008 of 23 July and Decree-Law no. 1/2010 of 18 February, is hereby repealed.

Article 3
Entry into force

The present Decree-Law enters into force on the day after its publication.

Approved by the Council of Ministers on 16 March 2011.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Finance,

Emília Pires

Promulgated on

Publish it.

The President of the Republic,

José Ramos-Horta