



## IV CONSTITUTIONAL GOVERNMENT

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**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

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,

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Kay Rala Xanana Gusmão

The Minister of Finance,

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Emília Pires

Promulgated on

Let it be published.

The President of the Republic,

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José Ramos-Horta