

**DEMOCRATIC REPUBLIC OF TIMOR-LESTE**

**GOVERNMENT DECREE LAW Nº.**

**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 contracts<sup>1</sup>, 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 116<sup>th</sup> 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.

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<sup>1</sup> 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 Contracting<sup>2</sup> 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

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<sup>2</sup> 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.<sup>3</sup>

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 means<sup>4</sup>.
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 .

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<sup>3</sup> indemnizations >>>> indemnifications

<sup>4</sup> 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 result<sup>5</sup> 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.

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<sup>5</sup> 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

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(Mari Bim Amude Alkatiri)

The Minister of the Planning and Finances

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(Maria Madalena Brites Boavida)

Promulgated on the 08 of November of 2005

To be Published.

The President of the Republic

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(Kay Rala Xanana Gusmão)