

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 115^o. 1. c) and article 116^o 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 **works**⁴, 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 a 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 87^o 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 imputate 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 ineligibility 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)