



**DEMOCRATIC REPUBLIC OF TIMOR-LESTE**  
**IV GOVERNMENT**

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**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,

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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



## 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		<b>Revision</b>	The Prime Minister, for contracts 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		