



DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

DECREE- LAW No. 12/2005

LEGAL REGIME OF PUBLIC CONTRACTS (RPC)

The implementation of the Legal Public Procurement Regime requires that rules on public contracts be established which will assist in the development of activities regarding the acquisition of goods, works and services for public purposes within an appropriate legal framework

With a view to achieving harmony in terms of practices related to public contracts and considering the absence of national legislation in the matter, basic rules shall be established and shall be observed by the intervening parties in these contracts, taking into account their specific nature.

The Government therefore decrees, under the terms of no. 1 sub-paragraph e) of article 115 and sub-paragraphs a) and d) of article 116 of the Constitution of the Republic, that the following becomes law:

CHAPTER I

RULES AND GENERAL PRINCIPLES

Section I

Principles and powers

Article 1

Objective

The purpose of this legal diploma is to establish basic rules applicable to public contracts in the Democratic Republic of Timor-Leste (DRTL).

Article 2

Scope

These basic rules shall be applied to all public contracts awarded by the public authorities of the Democratic Republic of Timor-Leste, with a view to providing goods, executing works or providing

services for public purposes.

Article 3

Public contract

For the purposes of this legal diploma, a public contract shall be understood as the bilateral bargain measure, in which at least one of the parties is a legal person governed by public law, the purpose of such measure being to meet the public needs of a public procurement procedure initiated by a competent authority.

Article 4

Principle of contractual charge unit

1. The amount of the public contract to be considered shall be the total cost of the acquisition of goods, works or services.
2. It shall be forbidden to divide the contract into fractions with the purpose of subtracting it from the regime set out in applicable legislation, including that conduct which consists in dividing the amount of its total real cost into several parts to ensure that none of them reaches the limit of the amounts established to be authorised by an authority.

Article 5

Principles of legality, good faith and proportionality

1. When entering into a public contract, public and private authorities shall act in conformity with the law.
2. The parties shall fulfil the demands of authenticity and principles of good faith and proportionality.
3. The contracts shall include clear, precise and fair clauses.

Article 6

The competent authorities which shall approve and sign public contracts

1. Public contracts shall be awarded, approved and signed by the competent authorities under the terms of the law.
2. The following authorities shall have the powers to approve or sign public contracts:
 - a) The Prime Minister, for contracts of a value equal to or higher than 1,000,000 USD (one million United States dollars);
 - b) The Minister of Planning and Finance;
 - c) The Contracts Committee;
 - d) The heads of sovereign bodies, Ministers and Secretaries of State, under the terms of their respective organic laws;
 - e) Those heads expressly appointed and authorised by the respective heads of the sovereign bodies and by Ministers and Secretaries of State;
 - f) The heads of the Autonomous Services, public authorities and other bodies with administrative and financial autonomy;

- g) Other legal persons with a share of State capital of over 50% (fifty percent) which, albeit not of a business nature, pursue eminently public aims.
- h) All other bodies and Public Services subject to the limits of the State Budget or which are mostly financed by it.

Article 7

Quantities

The authorities which have the powers to approve ratify and sign public contracts, in accordance with their quantities, shall be those established in Annex 2 of the Legal Public Procurement Regime.

Article 8

Powers of the Minister of Planning and Finance

In terms of public contracts, the Minister of Planning and Finance has the following powers:

- a) To implement the public contracts policy approved by the Government and to submit proposals and draw up reports on these same proposals, as well as to propose the adoption of the necessary corrective measures;
- b) To issue ministerial diplomas and instructions and to carry out the necessary administrative acts for the implementation of this decree-law;
- c) To analyse and decide upon the approval of public contracts, in accordance with the powers afforded them through this legal diploma and other Government provisions;
- d) To individually or together with other competent authorities approve public contracts which need the Minister's signature in accordance with the legislation in force;
- e) To delegate authorisations to sign public contracts up to an amount of 500,000 USD (five hundred thousand United States dollars) to the Public Procurement Authorities;
- f) To request for consultation and to call back any public contract, regardless of its phase of development, in order to guarantee it is in harmony with the policies defined by the Government;
- g) Other powers afforded the Minister by the Government and by law.

Article 9

Powers and responsibilities of the Public Procurement Authorities

The Public Procurement Authorities shall, in relation to public contracts, carry out the following functions:

- a) To advise the Minister of Planning and Finance on the global policy concerning public contracts;
- b) To take part in activities concerning the implementation of the Government's policy in terms of public contracts;
- c) To sign those contracts, the revision and approval of which are in their area of competence, in accordance with the terms set out in this decree-law and when the Minister of Planning and Finance has expressly delegated this power to these Authorities in writing;
- d) To administer the contracts signed at their level, or whose administration has been uncharged to them;

- e) To process claims on contractual non-fulfilment, when this responsibility has not been expressly assigned to another institution, and to inform those it concerns of the results;
- f) To recommend to the Minister of Planning and Finance the methodological parameters, procurement instructions and procedures guidebook which should be provided for the implementation of this decree-law;
- g) To ensure that the management policy of public contracts is complied with;
- h) To guarantee appropriate legal protection of the public interest in the contracts which are signed;
- i) To conserve the documents concerning signed public contracts for a period of five years;
- j) To promote occasional meetings and reunions between public authorities with powers to implement decentralised public procurement, with a view to promoting the fulfilment of the policies and rules in force in terms of public contracts;
- k) To guarantee the specialised training of staff in the area of public contracts;
- l) To draw up and keep updated records and accounts in order to faithfully reflect the economic activities performed;
- m) To prepare appropriate information and financial reports to reflect the operations, resources and expenses made with public contracts and submit them to their superiors on the dates established;
- n) Other powers afforded them under the terms of this decree-law and applicable rules.

Article 10

Public contracts in the case of decentralisation and simplified procedures

1. The heads of the authorities authorised to tender in a decentralised manner and according to simplified procedures shall be responsible for approving and signing the contracts within the scope of their legal powers, without prejudice to those activities which they can delegate under the terms of the applicable law.
2. The Public Services authorised to tender in a decentralised manner undertake to fulfil the rules set out for public procurement and shall be uncharged with the following responsibilities:
 - a) To submit monthly summaries of their activities within the scope of public contracts to the Procurement Department on the established dates;
 - b) To submit an Annual Evaluation Report on signed public contracts to the Procurement Department;
 - c) To comply with the provisions set out in sub-paragraphs d), e), g), h), i), k), l) and m) of paragraph 1 above.

Article 11

Delegation of powers

1. The delegation of powers concerning the signing of public contracts shall only be permitted when expressly authorised by law.
2. The heads of the authorities mentioned in sub-paragraphs d), e), f), g) and h) of article 6 who are responsible for services and bodies may in writing delegate the power to sign contracts.

3. Those heads who receive the delegation of powers in these cases may not sub-delegate.
4. The authority who delegates shall not be relieved of the responsibility of ensuring each one of the contracts approved by the subordinate heads to which he has delegated complies with the law.
5. A copy of the letter of delegation shall be attached to the contracts signed within the exercise of the powers delegated.

Section II

Contracts Committee

Article 12

Composition

1. The Contracts Committee is an advisory body formed under the terms of this legal diploma, which shall consist of experts with renowned professional experience, appointed by the Prime Minister.
2. The Contracts Committee shall consist of the following members:
 - a) A member representing the Minister of Planning and Finance who shall preside.
 - b) Four members representing the Public Service, one of which shall be appointed to replace the Committee chairperson in the event of his temporary absence;
3. The members of the Contracts Committee shall be appointed for a period of two years, renewable with the assent of the authority that proposes them and may be relieved of this responsibility when there are reasons to justify this decision.
4. In order to ensure continuity in the work and based on proposals made by the Public Service, five alternate members shall be appointed who shall be obliged to participate in the event of the absence of the Members of the Committee.

Article 13

Powers

The Contracts Committee shall be responsible for:

- a) Analysing, approving or ratifying, depending on the case, the proposals for awarding public contracts which exceed the value of 200,000 USD (two hundred thousand United States dollars);
- b) Appraising financial, technical, legal or social aspects concerning public contracts to be awarded and draw up a report on these matters to be sent to the Minister of Planning and Finance;
- c) Recommending the adoption of international rules and good practices to the Government ;
- d) Recommending the procurement policies to be adopted by all public authorities;
- e) Recommending the implementation of enforcement and procurement procedures control policies;
- f) Issuing an official opinion on complaints and appeals submitted by the tenders;
- g) Other activities which shall be especially afforded it by law.

Article 14

How the Committee works

1. The Contracts Committee follows the basic rules set out under the terms of this legal diploma, without prejudice to the procedures set out in an own diploma, approved by the Minister of Planning and Finance.
2. The Contracts Committee shall meet whenever summoned by its chairperson.

Article 15

Analysis of proposals by the Contracts Committee and other authorities for the award of contracts

1. When the Contracts Committee or other authorities are uncharged with approving the award of the contract, the ongoing procedure report shall be submitted within the time limits set out in the Legal Public Procurement Regime (LPPR).
2. Rejection by the Contracts Committee may only be based on the non-fulfilment of the rules and procedures established by law, notably pursuant to article 87 of the LPPR or to the requirements laid out in the tender documents.

CHAPTER II

TYPES OF PUBLIC CONTRACTS

Article 16

Types of contract

1. Public contracts entered into under the terms of this legal diploma may, depending on their object, be:
 - a) For the provision of goods;
 - b) For the provision of services;
 - c) For the execution of works.
2. Each type of contract mentioned in paragraph number 1 above may vary in accordance with the provisions of the additional rules to this legal diploma.
3. For reasons of public interest, contracts may be awarded with special or exclusive rights being attributed to certain goods, works or services in accordance with authorisations specifically granted by the competent authorities or Public Service.

Article 17

Classification criterion of public contracts

In the event operations for the provision of goods, provision of services and execution of works are included in the same contract, the predominant value shall be used as the basic criterion to determine the type of public contract and applicable rules.

Article 18

Public contract for the provision of goods

1. For the effects of this diploma, a public contract for the provision of goods is a written contract, subject to payment, entered into between the successful tendered and the awarding entity, the object of which being the purchase, the financial lease and/or the lease, with or without option to buy.
2. This contract may incidentally include works pertaining to the placement, installation and maintenance of goods.

Article 19

Public contract for property tenancy

The authorisation of the public contract for property tenancy for public purposes is subject to the rules set out in this legal diploma, to the rules of the Legal Public Procurement Regime and to the provisions concerning property in force in the country.

Article 20

Public contract for the provision of services

1. For the effects of this legal diploma, a public contract for the provision of services is a written contract, subject to payment, under the terms of which the successful tendered undertakes to provide services for an awarding entity or for a third party on behalf of the awarding entity.
2. This contract may include the provision of some material resources or the execution of small tasks required given the characteristics of the service to be provided.
3. This provision shall be applied to health professionals, particularly to specialist doctors.

Article 21

Public contract for the provision of professional services, for work in the area of design and consultancy

1. For the effects of this legal diploma, a public contract for the provision of professional services, for work in the area of design and consultancy, is a written contract, subject to payment, under the terms of which the successful tendered undertakes to provide professional services, for work in the area of design and consultancy, for an awarding entity or for a third party on behalf of the awarding entity.
2. In the acquisition of design and consultancy services, the respective authors undertake to accept to introduce the necessary corrections until the quality guarantee of the contract has elapsed.
3. For the effects of the provisions set out in paragraph 2 above, the following shall be considered as design services:
 - a) Projects or plans in the areas of rural and urban planning and architecture;
 - b) Projects or plans in the areas of civil engineering and construction of modes of transport;
 - c) Within the scope of computing, the processing of data and statistics;
 - d) Within the scope of design and legal-juridical consultancy, draft-diplomas to be submitted to sovereign bodies and for official legal opinions;
 - e) Any others whose objective is to plan works of public interest, employing highly qualified and specialised technical staff.

Article 22

Public contract for works

For the effects of this legal diploma, a public contract for works is a written contract, subject to payment, under the terms of which the successful tendered undertakes to carry out an action or a set of actions, consistent with works on property, for its repair, maintenance or construction, or any other professional activity concerning the areas of civil engineering, installation, decoration, finishing's and others of a similar nature which can also include the project preparation stage and/or the provision of certain material resources required, given the characteristics of the service to be provided.

Article 23

Subcontracting

1. Successful tenders may subcontract goods, works or services for the fulfilment of the principal object of the contract, whenever this option is included in the contract and at no additional cost to the awarding entity.
2. The successful tendered shall be solely responsible in relation to the awarding entity for having subcontracted to a third party.

Article 24

Other legal instruments

1. The competent Public Service may sign other legal instruments in the cases when due to the stability and permanence of the relations with a given provider it is advisable to define terms which shall be valid for over one year.
2. These instruments contain rules of a permanent nature which shall be consistently complied with by the parties in relation to the following:
 - a) General conditions of contracts for the provision of goods, the execution of works or the provision of services;
 - b) Rules of a general nature as regards quality, quality control systems, general delivery terms and conditions, packaging, transport and other requirements.
3. Details on prices, deadlines, quality and quantities shall be defined in the public contract to be signed.
4. These instruments are subject to the same approval and ratification regime as public contracts and their signature does not represent a criterion of preference in the choice of the tenders in the case of a public tender.

CHAPTER III

FORMALITIES REGARDING PUBLIC CONTRACTS

Article 25

The parties to a public contract

The parties to the public contract shall be the awarding Public Service and the tendered to which the

contract is to be awarded, hereinafter referred to as “the successful tendered”.

Article 26

Formalities regarding public contracts

1. The public contract shall be drawn up in writing in the same language that was required for the submission of the tender documents and when English is used, at least one copy of the contract in one of the official languages of the DRTL shall be signed.
2. In the contracts awarded to national entities, the language to be used should be either Portuguese or Tetum.
3. The contract shall be drawn up by the Public Service that initiated the procedure according to the specific rules set out in the law and with the mandatory use of the Standard Contracts Forms, without prejudice to any adjustments that may be required in each case.

Article 27

Contents of the public contract

1. The contents of the contract shall correspond to that set out in the tender documents and shall at least include the following basic aspects:
 - a) Identification of the parties;
 - b) Object of the contract;
 - c) Conditions and deadlines required to fulfil the obligations of the parties;
 - d) Price and form of payment;
 - e) Penalties for non-fulfilment;
 - f) Applicable Legal Regime and jurisdiction to settle possible disputes between the parties;
2. All contracts may contain any annexes considered necessary for the description of quantities, delivery dates and other details and shall be signed by the same people who sign the contract and for all legal purposes shall form an integral part thereof.
3. When the parties to a public contract agree to alter its initially accorded terms they shall sign the corresponding Supplement to the Contract, indicating the new agreements made and other specific details.

Article 28

Signing of the public contract

1. The public contract shall be signed by the parties or by their legitimate representatives within the period of time established in the tender documents or by law.
2. For the effects of signing the public contract, a legitimate representative of the Public Service shall be understood as the person competent to do so in conformity with the provisions set out in article 6 or to the person whom this power was delegated or by the legally appointed substitute who has been expressly authorised for this purpose.
3. The legitimate representative of the successful tendered of the contract shall be understood as the person producing documents proving such representation.
4. Once the date has been set to sign the contract, if for any exceptional reason the competent

entity cannot sign, this situation shall be resolved as soon as possible and shall cause the successful tendered no loss or damage.

Article 29

Legal regime

1. The legal regime applicable to public contracts shall be that contained in this legal diploma, as well as other additional rules issued by the competent authorities.
2. In case of loopholes, the rules of ordinary law may be used in the interpretation or performance of the contract, whenever they do not contradict the rules referred to in paragraph 1 above.

Article 30

Simplified contract

1. The public contract for the provision of goods, provision of services or execution of works may in exceptional cases be entered into in summary form to settle an urgent and unforeseen case, when the value does not exceed 1,000 USD (one thousand United States dollars).
2. The simplified contract shall be considered in force from the time the parties agree on their respective obligations, the awarding entity being responsible for keeping the documents on the operations concerning the authorisation to purchase in an unforeseen emergency and its corresponding payment.
3. The rule set out in paragraph 2 above shall not be applicable in the event of the purchase of capital goods or consultancy services, in which cases the contract shall always be formal.

Article 31

Entry into force of the contract

1. The contract shall enter into force when it is signed by the parties or by their legitimate representatives.
2. In the period between the forwarding of the notification of the award and the date of entry into force of the contract, neither the successful tendered nor may the awarding entity take any action that could interfere with the fulfilment of the pre-contractual terms set out in the tender documents.

Article 32

Types of guarantees

1. As part of the requirements for the award of the public contract, the Public Service may require that the successful tenders of the contract submit the following guarantees:
 - a) Contract performance guarantee and/or:
 - b) Quality guarantee.
2. The validity of the guarantees shall last until the date indicated in the tender documents and contracts.
3. The successful tendered may request, based on a reasonable argument, that certain conditions should exist or be created by the Public Service or the beneficiary as a premise

for the contract performance guarantee.

Article 33

Contract performance guarantee

1. The Public Service has the power to demand that the successful tendered provide a contract performance guarantee equivalent to a certain percentage of the value of the contractual value to a maximum of 15% (fifteen percent).
2. This guarantee, when required, shall be included in the contract and its validity shall last as long as the validity of the contract.
3. In the cases of contracts of a value of over 10,000 USD (ten thousand United States dollars) a performance guarantee shall always be required.

Article 34

Quality guarantee

1. The public contract may establish a temporary quality guarantee, the purpose of which is to safeguard the interests of the awarding Public Service against possible faults or failures of the goods, works or services.
2. The contract performance guarantee may become a quality guarantee which shall be subject to the same validity requirements as set out in the law.
4. In the cases of contracts of a value of over 50,000 USD (fifty thousand United States dollars) a quality guarantee shall always be required.

Article 35

Form of guarantees

1. The provision of a performance or quality guarantee may be requested in the form of letters of credit or guarantees from a reputable bank or financial institution or insurance company or may be met by way of deductions from regular payments, in accordance with the terms of the signed public contract.
2. In the tender documents and contract, the conditions regarding the issuer or the guarantor shall be specified, as well as the terms and the forms of guarantees, in order to be considered acceptable.
3. The guarantees shall obligatorily contain a repeal clause.
4. In the case of the guarantee and the issuer complying with the requirements established in the tender documents, it cannot be rejected on the grounds that it was issued by natural or legal person based outside the Country.

Article 36

Confirmation of the issuers of the contractual guarantees

1. The successful tendered shall request that the Public Service confirm its acceptability of a guarantee issuer or a guarantor and to receive an answer to this request in as short a period of time as possible.
2. This confirmation of acceptability shall not prevent the Public Service from rejecting the

bank guarantee on the grounds that the issuer or guarantors, depending on the case, have become insolvent or disreputable in terms of credit.

Article 37

Return of the deposited guarantee

1. The guarantee shall be rapidly returned when the reason that led to its deposit ceases to exist.
2. The Public Service shall return the guarantee document in a timely fashion after at least one of the following two facts has occurred:
 - a) The total fulfilment of the obligations by the parties, in the case of the performance guarantee which did not become a quality guarantee and,
 - b) The validity of the quality guarantees having elapsed, without having produced any loss or damage which required repair by means of same guarantee.

Article 38

Loss of contractual guarantees

1. The successful tendered loses the right to claim the return of one of the contractual guarantees when he has behaved in such a way as to be prejudicial to the Public Service and namely when:
 - a) The successful tendered does not fulfil any of his obligations set out in the contract, for reasons imputable to the successful tendered;
 - b) The successful tendered does not present the quality guarantee under the established terms;
 - c) He refuses to replace the goods, to resolve the faults of the works or services, or to make the corrections requested by the Public Service, during the validity of the performance guarantee or quality guarantee;
 - d) The contract has become prematurely extinct for reasons imputable to the successful tendered;
 - e) Once the contract has been signed and it has been proven that there was an offence under the Legal Public Procurement Regime, the special regime applicable or under the Legal Public Contracts Regime, which was decisive in the award of the contract.
2. The declaration of loss of deposited guarantee and the corresponding grounds shall be notified in writing to the successful tendered in as short a time as possible.

CHAPTER V

PERFORMANCE OF THE CONTRACT

Article 39

Transfer of signed contract

1. Once a contract has been signed, the Public Service may only under exceptional circumstances accept the transfer on behalf of a natural or legal person, when the successful tendered has requested this transfer on grounds which justify the impossibility of complying

with the contract for unforeseeable, unavoidable and unsolvable reasons.

2. In this event, the successful tendered who is transferring the contract shall therefore show that the new successful tendered resulting from the transfer has identical qualifications
3. The transferee shall also show his ability and qualifications to be able to enter into the public contract transferred on his behalf and to provide performance and quality guarantees under the same terms that were established for the transferor.
4. The Public Service shall register the transfer, which may occur only once, under the penalty of being declared illegible under the terms of the applicable legislation in terms of public procurement.

Article 40

Liability in terms of the performance of the public contract

1. Both the Public Service and the entity benefiting from the contract take the responsibility to comply with their corresponding obligations and have the right to demand the same from the successful tendered.
2. In the event of non-fulfilment of the contract, imputable to the Public Service or the beneficiary, the authority who signed the contract shall take the necessary measures to remedy the situation, in as short a time limit as possible.
3. When there has been non-fulfilment of the contract for reasons imputable to the successful tendered, the Public Service, party to the contract, shall initiate the most appropriate judicial or extra-judicial proceedings in order to prevent or compensate for damages or losses suffered in the public interest.

Article 41

Damages and losses

1. The declaration of loss of any of the contractual guarantees and their collection is without prejudice to the right of the Public Service to claim the payment of the penalties and compensation for damages and losses payable under the terms of the contract.
2. The compensation for damages and losses shall be claimed for the amount which surpasses that collected, to which shall be added the contractual guarantees and the payable penalties.

Article 42

Jurisdiction

Any disputes concerning public contracts shall be presented at the competent court of Timor-Leste, without prejudice to the assignment of the case to the court of arbitration, when it has been admitted under the terms set out by law and in the contract.

CHAPTER VI

SPECIAL AND TRANSITIONAL PROVISIONS

Article 43

Additional instructions

The Minister of Planning and Finance has the power to issue those additional instructions necessary for the implementation of this legal diploma.

Article 44

Initiated contracts

Those public contracts already signed, or when the procedure for the signing has already been initiated at the time this decree-law comes into force, shall continue to be subject to the rules previously in force until their implementation or until the quality guarantee elapses.

Article 21

Repeal

The provisions contrary to those set out in this legal diploma shall be repealed.

Article 22

Entry into force

This legal diploma shall enter into force sixty days upon the date of its publication.

Approved in Council of Ministers on 5th of October of 2005

The Prime Minister

(Mari Bim Amude Alkatiri)

Minister of Planning and Finance

(Maria Madalena Brites Boavida)

Promulgated on 8th of November of 2005

To be published

The President of the Republic

(Kay Rala Xanana Gusmão)