



## DEMOCRATIC REPUBLIC OF TIMOR-LESTE IV GOVERNMENT

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**DECREE LAW No. 24/2008**

**OF OF**

### **ALTERS THE PROVISIONING JUDICIAL REGIME**

The Provisioning Judicial Regime, approved by Decree Law No. 10/2005, of November 2, establishes an essential normative for the country, which are the rules of acquisition of goods and services by the State.

Taking into account the development of the country, the State has been the force behind the economic development not only through the investments in infrastructure but also regarding its own operational expenses, which feed a large part of local businesses in their activities.

Since the approval of this legal regime, the administrative services have strengthened its capacity in this area, which already justifies some level of decentralization of the Department of Finances for other departments and other entities, allowing them to promote some of their own provisioning procedures of the respective service.

Thus, and notwithstanding a general review of the provisioning being in course, it is understood that it is important to immediately seek some decentralization measures that will work as an experience and at the same time, will allow a relief of the Department of Finances of a series of easier procedures, but that imply time, which is essential in the treatment of more structured purchase processes.

Thus,

The Government decrees, under the terms of paragraph e) of No. 1 of Article 115 and paragraphs a) and d) of article 116, of the Republic's Constitution, to have the value of law, the following:

#### **Article 1 (Alteration to Decree Law 10/2005, of November 21)**

Articles 19, 20, 37, 43, 86, 91, 92 and 95 of Decree Law No. 10/2005, of November 21, which approves the Provisioning Judicial Regime, will now have the following text:

#### **“Article 19” Of provisioning decentralization**

1. The public entities mentioned in paragraphs c), d), e) and f) of No. 1 of article 15, in conformity with the respective budget allocation, has the competence to perform, in a decentralized manner, the provisioning operations, up to the amount authorized in the law and by means of authorization of the Department of Finances.
2. The referred entities in the previous article can increase the respective decentralized provisioning limit, through a process of accreditation, with the Department of Finances, under the terms of this article and the following article.
3. The entities authorized to perform decentralized provisioning operations must meet what is established in this document and in the respective regulation to approve by department document of the Department of Finances.
4. The entities authorized to perform provisioning operation must:
  - a) Meet all legal and regulation norms relative to the provisioning processes;
  - b) Plan and evaluate the provisioning proposals including the complex and high risk acquisitions;
  - c) Approve purchases within the respective accreditation limits and send the procedure proposals over this limit to the Department of Finances;
  - d) Monitor and elaborate reports about the provisioning processes and the procedures performed;
  - e) Promote counseling about provisioning to the directors and other employees of the service;
  - f) Promote the formation of employees in the areas of provisioning;
  - g) Support the Department of Finances in the performance of its functions.

## **Article 20**

### **Accreditation Process**

1. The entities referred to in paragraphs c), d), e) and f) of No. 1 of article 15 must make a request to the Department of Finances, the level of appropriate accreditation for the respective needs.
2. A provisioning accreditation is created, to be regulated by a department document of the Department of Finances with the following maximum limits:
  - 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 the change of degree must be accompanied by a management plan, including an implementation calendar to be approved by the Department of Finances.
4. The entities that promote a decentralized provisioning must present a Provisioning Annual Report to the Department of Finances, which must include an implementation report.
5. The Management Plan referred to in No. 3 is inspected by the Department of Finances within 3 years after the respective approval or whenever requested by the highest director of the respective service.

**Article 37**  
**Admitted Provisioning Procedures**

Under the terms and conditions of the order in the present document, the provisioning procedures can be of the following types:

- a) Competitive tendering, required with a mandatory character in the procedures of a value equal or superior to \$ 100.000 USD (one hundred thousand U.S. dollars), where any one of those interested can present a proposal, as long as those interested have the necessary requirements in the tendering documents;
- b) Limited tendering by pre-qualification, where only proposals from those selected in the pre-qualification procedure are admitted;
- c) Restricted tendering, where only those invited can present proposals;
- d) Through negotiation or proposals in two phases.
- e) Through quotation request;
- f) Through direct adjustment;
- g) Through simplified procedure.

**Article 43**  
**Procedure by quoting requests**

1. The provisioning procedure by quotation request is the one sent to at least three suppliers who are known by the Public Service and can be used whenever the value of the contract is inferior to \$100.000 USD (one hundred thousand U.S. dollars) for goods, construction or services of less complexity, which do not require technical specifications prepared in advance.
2. In this procedure, the choice of the adjudicator of the contract belongs to the Public Service itself without tendering procedure.

**Article 86**  
**Evaluation and choice in tendering procedures**

1. The main objective in tendering procedures is the selection of goods, services and constructions, with the best quality/price ratio, where the purchasing price is only one of the criteria in the choice of the adjudicator.
2. The cost/benefit relationship implies in a comparison of costs/benefits among the alternatives and the best result for the Government must take into account the costs and benefits during the economic life of each good, service, construction or consultancy during the respective economic durability and not only at the moment of purchase.
3. The essential criteria to be taken into consideration in the analysis of the proposals, based on the best cost/benefit, are the following:
  - a) Technical and professional analysis, in other words, the susceptibility of the good or service of fulfilling the functional and performance requisites, taking into consideration the following factors:
  - b) Meet the essential and desirable requisites;
  - c) Client service, including the support and maintenance of the good's durability;

- d) Quality guarantee;
  - e) Execution capacity;
  - f) Prior experience and performance;
  - g) Strategic matters, designated as local and financial capacity
4. Commercial analysis, in other words, the reliability of the proponent and the respective capacity of reducing the risk of the State, taking into account the following factors:
- a) Of East Timorese nationality or association with Timorese and professional credibility and reputation;
  - b) Financial capacity
  - c) Risk management, including insurance and use of authorized subcontractors;
  - d) Conformity with the conditions of the contract
  - e) Conflict of interests
  - f) Historic record of commercial relationships with the State.
5. Local development and industry must also be one of the requisites to be included in the announcement where the proposals must be evaluated and classified according to the following impacts:
- a) Promotion of Timor-Leste's industry and business capacity
  - b) Support to the East Timorese medium and small businesses in order to ascend to the State's purchasing market and the capacity of supplying the goods and their maintenance during their duration;
  - c) The number of jobs to be created for the Timorese
  - d) The level of transference of capacity and technology
  - e) Proportion of goods and services acquired locally;
  - f) Opportunities for regional and district development;
  - g) Local capacitation or programs supported by the candidate.
6. Financial analysis for the entire durability period of the goods, in other words, the total cost of each service, good or construction during the respective economical durability and not only the purchase price, avoiding cheaper products or services with inferior quality that might cost in the long run due to maintenance costs, taking into account:
- a) The capital costs, including purchase price, assembly, initial operation and training, including:
  - b) Operational costs such as, salaries, maintenance, energy costs and license costs;

These costs must be reduced to a series of common factors that make the rational comparison of the proposals easier.

7. For the quotations that exceed 100.000 USD a declaration of commitment from the candidates is required and must accentuate the commitment of creating local jobs; the transference of knowledge and technology to local workers and the proportion of goods and services acquired at a local level and that must be part of the contract's annex with the adjudicator.
8. The provisioning services must develop provisioning criteria, based on the principles of this article, appropriate for the tendering procedures, where numeric scales must be

created for these evaluation criteria. The financial analyses, which specify the costs, do not count as points. The general rules and the specifications of each tendering procedure must integrate each tendering document. And the specific evaluation criteria will also have to be included in the tendering invitations.

9. The proposals must be submitted in two envelopes; envelope number one must respond to the professional and technical criteria, commercial and industrial analysis and local development. Envelope number two must contain the value of the proposal.
10. The competitors must be integrated in a final list based on the capacity of meeting the requisites foreseen for the criteria of envelope number one. This demonstrates the Government's commitment to give the maximum priority to the value instead of the price, through the company's professional and technical capacity, the respective commercial stability and the capacity to improve the Timor-Leste's local and regional development. Only afterwards will the jury consider the content of the financial cost included in envelope number two.
11. Envelope number two will be opened relatively to the first two classified in the short list.
12. The chosen candidate will be evaluated based on the meeting of the foreseen criteria in envelope number one and the underlined price in envelope number two.
13. The Secretary of Finances must promote periodic audits in order to verify the fulfillment of the provisioning norms foreseen in this article.

### **Article 91 Of the Procedure by quoting requests**

In the procedures by quoting requests, the final proposals must be evaluated and compared by the Public Service itself in order to choose according to the following general rules:

- a) The proposal with the lowest price, subject to any margin of preference applied to the national competitors or for the benefit of the proposals that involve local products;
- b) The proposal with the best quality/price relation, from companies that are not in debt with the State because of prior contracts considered to be unfulfilled, demonstrate a specialization in the activity area so that they can be candidates and have their taxes up to date.

### **Article 92 Of the protocols for the provisioning by Direct Adjustment**

The Public service may opt for the direct choice in the following cases:

- a) In cases of urgency that put the public health and security in risk, in the sequence of unpredictable events.
- b) When there are no proposals or, there are no proposals that meet the requisites required for the participation,
- c) There are no competitors because of technical reasons;
- d) When the goods and services can only be supplied by a specific entity and there are no reasonable alternatives or replacements on the market;

- e) For the additional supply of goods and services that have the purpose of replacing parts, the extension or continuation of services or goods for existing equipment, software, services or facilities where the replacement of the supplier would result in the acquisition of goods and services that do not fulfill the adaptability or compatibility requisites;
  - f) When directed towards the acquisition of a prototype for an original service or goods or for purposes of limited experimentation or that is created for a particular research, experiment, study or original creation contract;
  - g) For the protection of patents, royalties or other exclusive rights or of intellectual property;
  - h) For goods acquired in a market of merchandize or for purchases under advantageous conditions, including unsolicited innovating proposals;
  - i) As the result of a drawing competition.
2. The documentation of all the operations are obligatory, as well as the circumstances that justify the use of the procedure.

**Article 95**  
**The protocols of simplified procedures**

1. The top directors of the entities mentioned in paragraphs d), e), f) and g) of article 15 can delegate the execution of current periodic provisioning expenses that are properly budgeted to other directors, up to the amount of USD 5.000 (five thousand U.S. dollars), without consultation expenses of availability of goods or services at the Patrimony Supply Center.
2. The protocols of the simplified procedures are established in the complementary norms of the Department of Finances.
3. The directors of authorized entities to operate in a decentralized manner and according to the simplified procedures are in charge of managing and controlling the development of these operations and assume the responsibility of approving and signing the contracts within the range of their legal attributes, without damage to those activities that they might delegate under the terms of the law.

**Article 2**  
**Negotiations for Purchases over USD \$ 250.000**

A new article 37 – A is created with the following text:

**“Article 37 – A”**  
**Negotiations for Purchases over USD \$ 250.000**

1. In the provisioning procedures with a value superior to USD \$ 250.000, the price negotiation is possible with the competitors that fulfill the technical requisites announced in the tendering procedure with the intent of obtaining the best solution and the best commercial contract possible.
2. The negotiations referred to in the previous number can include the following aspects beyond the price:
  - a) Additional options of the added value;
  - b) Specific managerial schemes of the contract;

- c) Personnel responsible for the several contractual phases or commitments;
  - d) The possibility of transference of intellectual property;
  - e) Guarantees.
3. The negotiation proposals, when more than a competitor's must be exactly equal and must always be done in writing.
  4. The negotiations referred to in this article can alter the range or purpose of the tendering process without being considered invalidated.

### **Article 3**

#### **Procedures and contracts in progress**

The procedures already elapsing and the public contracts already signed or in the process of being signed at the moment that the present Law becomes effective, continue to be subject to the rules previously in effect up to its executions and to the term of quality guarantee.

### **Article 4**

#### **Prevalence**

The articles that have been altered prevail over all the others of the document, in the case of doubts of interpretation or the non-consonance between them.

### **Article 5**

#### **Revocation**

1. The article 93 of Decree Law No. 10/2005, of November 21 is revoked, which approves the Provisioning Judicial Regime.
  
2. Annex 2 of Decree Law No. 10/2005, of November 21 is altered, which approves the Provisioning Judicial Regime, will now have the text featured in the annex of the present document.

### **Article 6**

#### **Republishing**

The full version of Decree Law No. 10/2005, of November 21, in its updated version is published in an annex of the present document.

### **Article 7**

#### **Comes into Effect**

The present document goes into effect on the day following its publication.

Approved by the Secretary Council on

The Prime-Minister,

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Kay Rala Xanana Gusmão

The Secretary of Finances,

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Emília Pires

Promulgated on

To be published.

The President of the Republic,

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José Ramos-Horta



## ANNEX 2

### Limits of quantities to begin the provisioning operations, evaluate and approve the signature of public contracts (Article 15)

The Entity that starts the provisioning procedure		Ratification Organs of the adjudication and signature of the Public Contracts	
Provisioning service by request of the interested Public Service		<b>Review</b>	Prime-Minister, in contracts of with a value equal or superior to \$ 1.000.000
		Contracting Committee for contracts equal or superior to \$ 200. 000	Department of Planning and Finances, in procedures with a value up to \$1.000.000  Provisioning service by delegation of the DF between \$ 200. 000 and less than \$ 1.000. 000
		Provisioning Service by delegation of the DPF	
Members of the Government and top directors of the other Sovereign Organs, up to \$ 10.000, or up to \$ 1.000.000 in the cases of article 20.		Top directors of the other sovereign organs, Department Secretaries and Secretaries of State	
Top directors of Autonomous Services and competent public entities, up to \$ 1.000.000 in the cases of article 20.		The top directors of the Autonomous Services, the public entities and other organisms endowed with administrative and financial autonomy, including companies with mixed capital.	
Directors expressly nominated and authorized, up to \$ 5.000		Directors expressly nominated and authorized by the top directors of sovereign organs and by the Members of Government, including all the other organs and public services unmentioned before	
Leasing with an annual revenue equal or superior to \$ 100.000	Provisioning Service by request of the interested Public Service	Like the baselines established for the other provisioning procedures  The leasing of a foreign property requires authorization from the DPF and DNEC	
Leasing with an annual revenue inferior to \$ 100.000	Interested Public Service		

**DECREE LAW No. 10/2005**

**OF NOVEMBER 21**

## **PROVISIONING JUDICIAL REGIME (PJR)**

The realization of provisioning expenses by the Government of the Democratic Republic of Timor-Leste (DRTL), with the intent of guaranteeing the satisfaction of the Administration's needs and of other entities and public services, requires the establishment of a specific judicial regime to ensure the good management of financial resources.

The experience already obtained in the acquisition operations of goods, the execution of works and the provision of services with public purposes, recommends the adoption of clear and simple rules, tending to make the organization of the provisioning procedure easier, defining a legal base with administrative and procedural extent that enables the coherent development of these activities, in the sequence of international regulation existing in this matter.

In order to reach transparency, economy and efficiency, it is important to establish adequate judicial norms for the Country's development needs, which allow for the harmonization of good practices in provisioning procedures with an adequate control of these activities.

In the same way, the indispensable result that the judicial ordainment relative to the provisioning, be an incentive for the production of goods and the provision of services or the execution of works, which will simultaneously guarantee competition and promote the participation of companies, both national and international.

Thus, the Government decrees, under the terms of No. 1, paragraph e) of article 115 and paragraphs a) and d) of article 116 of the Republic's Constitution, to have the effect of law, the following:

### **TITLE I GENERAL PRINCIPLES AND RULES**

#### **CHAPTER I COMMON DETERMINATIONS**

##### **SECTION I GENERALITIES**

###### **Article 1 Objectives**

The Provisioning Judicial Regime (PJR) has the objective of establishing the general norms of the realization of expenses for the acquisition of goods and services or the execution of works, intended for the satisfaction of the needs of the entities of the direct and indirect Administration of the State.

###### **Article 2 Application Extent**

1. The extent of the application of the present document comprises the provisioning procedures of the public services done at the expense of the State's General Budget or as the incumbency of other financial resources that are held or controlled by them.

2. All the activities of acquisition of goods and services are subject to this general provisioning judicial regime as a baseline norm, as well as the execution of works for public purposes.
3. Without damage of the application of the general principles of the present law, will follow the rules of their special judicial regimes of the following provisioning procedures:
  - a) Relative to the National Defense or National Security;
  - b) Declared secret, or object of official secrecy;
  - c) Subject to special security measures under the terms of the current legislation of the DRTL or of international norms;
  - d) Relative to the competence of the Autonomous Service of Medication and Health Equipments, EP;
  - e) Any other that the Government decides to regulate separately.
4. In the realization of expenses that comprise, simultaneously, the acquisition of goods, execution of works, provision of services, to the shelter of the present document and also one of those subject to one of the special regimes, the foreseen regime is applied for a component of greater financial expression.
5. The diplomatic and consular representations and the DRTL's permanent missions abroad, follow the principles of the present judicial regime, with the due adaptations, to fix in a combined document of the Planning and Finances Department and the Department of Foreign Businesses and Cooperation.

### **Article 3** **Definitions**

1. For the effects of the present law and of its complementary norms, the terms used, have the following meanings:
  - a) Announcement: is the act of publication through the press organs or social communication, through which the public service intends that potential candidates to offer goods, execute works or provide services, participate in the procedure to be initiated;
  - b) Provisioning: is the acquisition of goods, the execution of works and the provision of services intended for public purposes;
  - c) Provisioning of goods or Supply: is the purchase, civil leasing, including the leasing of property, financial leasing, with or without a buying option and that might include with an accessory character of the contracting of the respective assembly and maintenance jobs;
  - d) Competitors: are generically designated as such, all of those interested in providing goods, executing works or providing services, which are object of the provisioning procedure, from the moment that they manifest their interest in participating in the procedure;
  - e) Central of Patrimony Supply (CPF): the service in charge of acquiring in a centralized manner, the goods for the current use of the other public services, maintaining them and making them available as they are needed;
  - f) Invitation: is the communication sent directly by the public service to certain pre-qualified suppliers or participant in a limited tendering process by pre-qualification,

in a restricted procedure or in a procedure by negotiation, in order to present their proposals;

- g) Supplier or Salesperson: the individual or company, as a potential contractual party, in a procedure of acquisition of goods, of the execution of works or provision of services, intended for the satisfaction of public needs;
  - h) Works: the action or group of actions intended to perform jobs on properties, relative to restoration, maintenance or construction of facilities intended to guarantee the development of activities with public purposes and which might also include any other professional activity of civil engineering and others of a similar nature as well as the project of the construction and the supply of certain material resources required by their characteristics;
  - i) Service Provision: the action or group of actions that by means of an individual or company, provides services to a public service or to a third party, which can include the provision of certain accessory resources or materials required by the characteristics of the service to be provided, or the execution of works directly related to the service;
  - j) Public Service, adjudicating entity or provisioning entity: all the Services and entities featured in the previous article that have the faculty of participating directly in the management of the provisioning and competence to begin a acquisition provision of goods, for the execution of works or the provision of services for it or for third party entities;
  - k) Type of provisioning procedure: each one of the variants to be used as methods to contract goods, works or services.
2. With a declarative but not limited character and to make the comprehension of the present law easier, in Annex 1 there are definitions of other terms also used in the text of the present document.

## **SECTION II OF THE PRINCIPLES**

### **Article 4 Principles of legality and equality**

1. In the preparation and execution of the provisioning procedures, the Public Services observe the typified rules in the present document, only admitting the exceptions foreseen by the law.
2. The conditions of access and participation are equal for all of those interested and such criteria must be well expressed throughout the protocol of the provisioning procedure, where any discrimination to the competitors being prevented.
3. There must be a guarantee that in each procedure, the greatest number possible of competitors be consulted and always, the minimal number imposed by law.

### **Article 5 Public interest principles, of impartiality and confidentiality**

1. During the preparation and throughout the entire procedure, the Public Service must watch for the maximum satisfaction of the collective needs that the law entrusts them.

2. All the interests must be taken into consideration in the provisioning procedures, where the procedure documents and other relevant documents cannot include clauses susceptible of benefiting or jeopardize any of the parties.
3. The Public Service, its employees and agents must preserve the confidentiality of the documents and information submitted by the competitors.

**Article 6**  
**Good faith and proportionality principles**

1. In the fulfillment of the provisioning procedures, the public and private entities must act according to the requirements of authenticity and veracity in their communication with each other.
2. The procedure to be adopted must be chosen by pondering its adequacy, the costs and benefits for the purposes to be met.

**Article 7**  
**Transparency and publicity principles**

1. The adjudication criteria must be well defined at a moment prior to the procedure and the information must be guaranteed to the competitors from the date of its opening.
2. The choice of the proposals must always be justified in writing.
3. The Public Service must guarantee the publication of their intention to contract, except for the exceptional regimes foreseen in this document and other applicable regulation.
4. The present law, its complementary norms, the decisions and administrative directives of general application, related to the provisioning procedure, as well as all its amendments, must be promptly made available to the public and systematically updated.

**Article 8**  
**Stability and security principles**

1. The relevant documents that serve as a base for the procedure must be kept unaltered during the entire procedural protocol, up to the end.
2. In the procedures where any negotiation is not foreseen, the proposals presented by the competitors are unaltered until the respective adjudication.
3. After the adjudication, the parties can introduce, by means of a mutual agreement, certain adjustments of an accessory or functional character, as long as unequivocally observed the principle of public interest.
4. After receiving the proposals, the Public Service can only unilaterally desist in the cases foreseen in the present document.

**Article 9**  
**Principle of Accountability**

The intervening parties in the procedure, entities, employees, contracted parties and economic agents can be legally, financially and disciplinarily held accountable under the terms of the law, because of conducts that violate the determinations in the present document, without the jeopardy of criminal sentences to which they are subject.

**Article 10**  
**Principle of expense unit**

1. The amount of provisioning to be considered is the total cost of the acquisition of goods, the execution of works or the provision of services.
2. The fractioning of expenses with the intent of subtracting them from the foreseen regime is prohibited, including the conduct that consists in dividing the amount of real total cost of the acquisition into several installments, in a way that none of them reaches the limits of the established amount.
3. The qualifications fixed to approve expenses added by alterations, reviews of prices and amendments to the original contracts, duly justified and through the evaluation of the Planning and Finances Department, can be exceptionally authorized in dependence of the existence of budget allocation, up to 10% of the foreseen cost and up to a limit of USD 40.000 (forty thousand U.S. dollars) in the initial contract and the circumstances foreseen in this document.
4. If the percentage or limit referred to in the previous number is exceeded, the qualification is transferred to the entity that must authorize the contract according to the real total cost of the provisioning operation.

**Article 11**  
**Principle of obedience to the general norms**

1. All the acts inherent to the provisioning must observe the current legal norms in the DRTL, be it of a general character, and be it in this PJR or other specific ones or their complementary.
2. The present law is applied, as a basic rule, and with a supplementary character in the case of gaps in the documents mentioned in number 3 of article 2.

**Article 12**  
**Principle of the compatibility with the international norms**

The present diploma is not applicable when in conflict with the law with an international obligation contracted by the DRTL, due to:

- a) A treaty or another form of international agreement signed by the DRTL with one or more States;
- b) An agreement between the DRTL and an international financial institution.

**Article 13**  
**Retroactivity and interpretation**

1. The current norms are not applicable retroactively, without damage to the legitimate expectations of the competitors and as long as does not cause damage to the interests of the State.
2. The substantive interpretation and the eventual filling out of the gaps in the norms contained in the present document are effected through a Resolution of the Council of Ministers.

3. According to the determination in the previous number does not apply in the case of mere procedural interpretations insusceptible of affecting the interests of the parties and the main enunciations in this Section.

#### **Article 14**

##### **The counting of deadlines**

1. As a general principle, the deadlines must give enough time so that those interested in participating can prepare and submit the documentation and other required information, taking into account the reasonable needs of the Public Service.
2. The deadlines for the presentation of proposals are counted as elapsed.
3. The suspension or extension of deadlines must be done according to the rules established in the present document.
4. In the case that the deadline date coincides with a holiday, it is postponed to the following business day.

### **CHAPTER II**

#### **QUALIFICATIONS IN THE PROVISIONING PROCEDURE**

##### **SECTION I**

##### **QUALIFICATIONS OF THE ENTITIES**

#### **Article 15**

##### **Entities qualified to authorize provisioning procedures**

The following entities are competent to authorize the beginning of a provisioning procedure:

- a) The Prime-Minister, in contracts with a value equal or superior to USD 1.000.000 (one million U.S. dollars);
  - b) The Planning and Finances Secretary;
  - c) The top directors of the sovereign organs, the Ministers and Secretaries of State, under the terms of their respective organic laws;
  - d) The directors expressly nominated and authorized by the respective top directors of the sovereign organs and by Ministers and Secretaries of State;
  - e) The top directors of the Autonomous Services, the public entities and other organisms endowed with administrative and financial autonomy;
  - f) The other collective persons with the participation of State capital superior to 50% that despite not having a business nature, proceed eminently public purposes;
  - g) All other organs and public services subject to State Budget discipline or whose majority of funding derives thereof.
2. The amounts up to which the entities are qualified to initiate, approve and ratify the provisioning operations are established in Annex 2 of the present document.

#### **Article 16**

##### **Competencies of the Minister of Finances**

The Planning and Finances Minister has, relative to the provisioning procedure, the following attributions:

- a) Execute the provisioning policy approved by the Government and present proposals to the Government relative to it;

- b) Present procedure proposals to the Government that guarantee the fulfillment of the general principles and of rational satisfaction of the needs of the States;
- c) Present reports about the fulfillment of the provisioning policies to the Government and propose the adoption of the necessary corrective measures;
- d) Obtain ministerial documents, instructions and administrative acts necessary for the implementation of the present law;
- e) Analyze and decide the operations attributed to him by the present law and by other Government decisions;
- f) Request for consultation and invoke any provisioning process, regardless of the phase they are in, in order to guarantee its harmony with the policies defined by the Government;
- g) Other competencies that are attributed to him by the Government or by the law.

### **Article 17**

#### **Competencies of the Provisioning Service**

1. The Provisioning Service of the Planning and Finances Ministry, before the Provisioning Service is the department in charge of coordinating the provisioning procedure regulated in the present document and has the following competencies:

Advise the Planning and Finances Minister about the global policy in terms of provisioning;

Participate in the activities relative to the execution of the Government's policy regarding the provisioning;

Organize, coordinate, control and manage the provisioning operations according to what is established in the present law and other complementary norms;

Recommend to the Planning and Finances Minister the methodological parameters, provisioning instructions and procedure manuals that must be arranged for the implementation of the present law;

Verify the fulfillment of the provisioning planning policy, the tendering procedures, general logistics and supply administration;

Perform the review, purchase and management operations that are attributed to him according to the present law;

Preserve, for 5 years, the documentation relative to provisioning operations;

Promote periodic meetings with other Services of the Public Administration and other services with the faculties to perform a decentralized provisioning, with the intent of promoting the fulfillment of the policies and norms in effect in terms of provisioning;

Guarantee the specialized preparation of the personnel in the areas dedicated to the provisioning;

Other competencies attributed to him in the present law and under the norms in effect.

The Provisioning Service also exercises the following functions:



- a) Perform the provisioning management when it is its competence, according to what is established in the present law and previous expressed and written delegation of the Planning and Finances Minister;
- b) Propose the imposition of administrative measures for the violators of the norms relative to the present Judicial Regime according to the established legal procedures.

### **Article 18**

#### **The responsibilities of the Provisioning Service**

1. The Provisioning Service must perform the provisioning operations that are requested by the Public Services referred to in article 15 in the following cases:
  - a) When the provisioning surpasses the limits approved to be done in a decentralized manner by them;
  - b) When it is expressly requested by the top directors of these Services;
  - c) When dealing with the provisioning of the State's territorial administrative and financial decentralization organs, without the competencies to perform its own provisioning.
  - d) Of any other institutions, whose expenses are made at the cost of the State's General Budget or with other funds controlled by them, except in the cases that have administrative and financial autonomy granted by law.
2. For the purposes of fulfilling of the present law, and other complementary norms, the Provisioning Service also has the following responsibilities:
  - a) Methodologically orient the entities that execute provisioning operations;
  - b) Assist the Public Services about the state of execution of financial resources received for their operations of centralized provisioning;
  - c) Draw up and maintain updated records and accounts in a way as to faithfully reflect the economic facts performed;
  - d) Prepare adequate financial information and reports to reflect the operations, resources and expenses related to the activity of provisioning and present them to the superior levels on the established dates;
  - e) Guarantee an adequate price/quality relationship of the goods, works or services that are the object of provisioning;

### **Article 19**

#### **Decentralization in the provisioning**

1. The public entities mentioned in paragraphs c), d), e) and f) of No. 1 of article 15, in conformity with the respective budget allocation, has the competency to perform, in a decentralized manner, the provisioning operations, up to the amount authorized in the law and by means of an authorization by the Finances Ministry.
2. The entities referred to in the previous article can increase the respective limit of decentralized provisioning, through an accreditation process with the Finances Ministry, under the terms of this and the following article.
3. The entities authorized to perform decentralized provisioning operations must fulfill what is established in this document and in the respective regulation to be approved by ministerial document from the Minister of Finances.

4. The entities authorized to perform provisioning operations are obligated to:
  - h) Meet the legal and regulation norms relative to the provisioning processes;
  - i) Planning and evaluating the provisioning proposals, including the complex and high risk acquisitions;
  - j) Approve purchases within the respective accreditation limits and send the proposals of procedures above this limit to the Ministry of Finances;
  - k) Monitor and prepare reports about the provisioning processes and the procedures executed;
  - l) Promote counseling about provisioning to the directors and other employees of the service;
  - m) Promote the training of the employees in the provisioning areas;
  - n) Support the Ministry of Finances in the performance of the functions.

## **Article 20**

### **Accreditation Process**

1. The referred entities in No. 1 of the previous article must request the Finances Ministry, the level of accreditation appropriate for the respective needs.
2. An accreditation of provisioning system is created, to be regulated by a ministerial document from the Minister of Finances with the following maximum limits:
  - 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 accreditation request and the change of degree must be accompanied by a management plan, including an implementation calendar to be approved by the Minister of Finances.
4. The entities that promote a decentralized provisioning must present an Annual Provisioning Report to the Ministry of Finances, which must include a fulfillment report.
5. The Management Plan, referred to in No. 3, is inspected by the Ministry of Finances within a period of 3 years after the respective approval, or whenever that it is requested by the top director of the respective service.

## **Article 21**

### **Delegation of competencies**

1. The delegation of competencies in terms of provisioning is only allowed whenever expressly authorized by law.
2. The top directors of the entities mentioned in paragraphs c), d), e) f) and g), of article 15, which has subordinated services or organisms, can delegate in writing, the competence to perform provisioning procedures.
3. The directors that receive the delegation of competencies cannot sub delegate in others.

4. The entity that delegates is not exonerated from the responsibility of fulfilling the law in each of the provisioning procedures that are done by the organs or entities subordinated that have been delegated.

#### **Article 22**

##### **About the authorization of expenses for the leasing of real estate**

1. The same entities that are competent to initiate and approve provisioning operations are competent to authorize expenses for the leasing of real estate of public purposes.
2. The amount to take into account in order to determine the competent organ to make the choice, as well as to approve, ratify or sign the contract is the annual revenue of the lease.
3. The expenses with real estate leasing located abroad also require the authorization by the Minister of Planning and Finances and by the Minister of Foreign Businesses and Cooperation.

#### **Article 23**

##### **The contracting committee**

1. The provisioning operations, when justified by its amount or its nature, must also be evaluated and approved by the Contracting Committee constituted under the terms of the law.
2. Without damage to what is established in the present document, the competencies of this Committee are defined in the document relative to public contracting.

## **SECTION II THE PROVISIONING RECORDS**

#### **Article 24**

##### **The file**

1. With the purpose of controlling the basic information relative to its activities, the entities authorized to perform provisioning operations and, in a centralized manner, the Provisioning Service of the Ministry of Planning and Finances must create and maintain a file, which must at least contain:
  - a) The annual provisioning plan;
  - b) The data relative to the Announcements and Invitations for the provisioning;
  - c) The results of the procedures, including the names of companies and individuals to which the contracts have been attributed as well as their values;
  - d) The information of measures applied to the competitors;
  - e) All the other information that might be required by the legal norms.
2. The rules relative to the registration of the operations and the salespeople and suppliers, can be regulated by ministerial dispatch by the Minister of Finances.

#### **Article 25**

##### **The registration of salespeople**

1. With the intent of controlling the information relative to the salespeople, a salespeople registration is created, to be maintained with the due confidentiality by the Provisioning Service, which must contain:

- a) The list of Salespeople, divided into areas of specialization;
  - b) The data relative to the salespeople of goods and services that have participated in the provisioning operations, according to what is established in the respective specific norms;
  - c) The information of the measures applied to each one of them.
2. The entities with decentralized competencies for provisioning effects, can request information to the Provisioning Service of the Ministry of Planning and Finances relative to the salespeople, during the phases of evaluation of the pre-qualifications or the qualifications with the intent of guaranteeing the precision of the data indicated by them.
  3. At the request of those interested, the Provisioning Service can issue the registration certificates for the registry of salespeople.

## **CHAPTER III THE COMPETITORS**

### **SECTION I GENERAL RULES OF THE BIDDING**

#### **Article 26 The declared qualifications**

1. The individuals and companies that are bidding in a provisioning operation must demonstrate their qualifications, namely the fulfillment of the requisites established in the law and the requisites of the current operation.
2. The evaluation criteria of the qualifications must be solely based on the essential requisites and specifications referred to in the law and in the pre-qualification documents and/or the competition.

#### **Article 27 The essential requisites**

1. In order to participate in the provisioning procedures, the competitors must accredit the filling out of the following essential requisites:
  - a) Have enough business capacity, reliability, experience and reputation in order to guarantee the fulfillment of the contract;
  - b) Have the legal capacity to solemnize the contract;
  - c) Have met all the legal requisites required in the DRTL to act in a provisioning operation;
  - d) Have enough financial resources for the fulfillment of the contract;
  - e) Have the personnel with the professional and technical qualifications and competence required to guarantee the fulfillment of the contract;
  - f) Have met its fiscal obligations and contributions for the social security, in the case of adjudicates with its headquarters in Timor-Leste;
  - g) Not present any of the causes for disqualification foreseen in the present document.

2. Without direct jeopardy to the right of the competitors to protect their intellectual property or their commercial secrets, the Public Service can require the appropriate documentation or other information that might be considered useful in order to certify their qualifications.

### **Article 28**

#### **The specific requisites**

1. The Public Service can establish any other specific requisites regarding the qualifications to be met by the competitors, which must be indicated in the pre-qualification documents or in the bidding documents or in the request of quotes.
2. Under no circumstances, can the Public Service establish discriminatory requisites for any of the competitors, or against their categories or groups, based on nationality or other aspects that are not objectively justifiable.

### **Article 29**

#### **The causes for disqualification and impediments**

1. The competitors that incur in one of the following situations will be disqualified and excluded from the provisioning procedure:
  - a) Are insolvent or declared bankrupt;
  - b) Are in a situation or process of cessation of activity, trusteeship, bankruptcy or liquidation;
  - c) Their business is being managed by a court or legal agent;
  - d) Have had their business activities suspended by a judicial decision;
  - e) Have public debts, of social contributions or of any nature with the State;
  - f) Their directors or managers have been tried and convicted by judicial sentence, by any criminal offense regarding their professional conduct or with providing false declarations or erroneous information regarding their qualifications, for the signing of a contract with any public institution in the DRTL during the five previous years;
  - g) Have been disqualified in another way as a result of administrative suspensions or of licensing procedures;
  - h) The competitor or his representative find themselves incurred in a situation of incompatibility, under the terms of the present document;
  - i) Submit more than one offer in the same bid.
2. The previous causes for disqualification and impediments are informed to the competitors in the pre-qualification documents or in the bidding documents.
3. The Public Service must disqualify the competitor in case it verifies, at any point, that the information provided regarding his qualifications are false or contain mistakes or essential omissions.

### **Article 30**

#### **The proof of the requisites**

1. The Public Service can request that the competitors provide the appropriate documentation or other information that might be considered useful to certify their qualification.
2. The requisition can include the notarized certification or the official confirmation of any document relative to the qualification of the suppliers in the provisioning procedures.

## **CHAPTER IV THE INCOMPATIBILITIES**

### **SECTION I THE INCOMPATIBILITIES RELATIVE TO THE PARTICIPANTS**

#### **Article 31**

##### **Incompatibilities of the employees and agents of the Public Administration**

Due to the regime of exclusivity fixed by law, relative to public employees and the agents of the Public Administration, results in incompatibility the exercise of any act that intends to be done in representation of any of the competitors in the provisioning procedure, except for the case where they participate as officials of the public entity where they provide services.

#### **Article 32**

##### **Conflict of interests**

1. The public employees and agents of the Public Administration must observe, relative to his participation in provisioning operations, the rules about conflict of interest established in the Statute of Public Function.
2. The Public Services, in its intervention in the provisioning procedures, cannot be represented or in any way assisted by the following people:
  - a) Relatives up to the second degree of consanguinity, spouses or that maintain commercial relationships with one of the competitors;
  - b) Those who, over the last three years, counting from the opening of the bid, have been the partners of one of the competitors.
3. The Public Service cannot adjudicate the contract to family members up to the second degree of consanguinity or associated to consultants who have intervened in any capacity in the procedure.

#### **Article 33**

##### **The incompatibilities of the competitors**

Without jeopardy of the competitor to request from the Public Service, in writing, the clarifications and hearings necessary, the exercise will be incompatible, directly or through another person, in any activity with the intent of influencing the organs in charge of evaluating the pre-qualifications, or the qualifications, or adjudicating the contract.

### **SECTION II GENERAL RULES ABOUT THE INCOMPATIBILITIES**

#### **Article 34**

## **Relationship between the competitors and the Public Service**

1. Except for the cases foreseen in the law, there must not be any negotiations between the Public Service and a competitor regarding a submitted offer, prior to the adjudication of the contract.
2. Clarifications can be requested regarding the concepts design or orientations, or technical specifications, requested in the previous conference, or in writing, but in no case are those relative to prices and payment conditions allowed.

### **Article 35**

#### **The effects of the incompatibilities**

1. At any moment or phase of the procedure where an incompatible conduct or conflict of interest is detected by the authorities in charge of the provisioning control, must request from the competent instances, that the nullity of the acts relative to the current provisioning be declared.
2. In the case of the public employees or Public Administration agents, the authority that detects the incompatibility must request the beginning of the corresponding process of averigation or disciplinary, according to what is established in the legislation in effect.

## **TITLE II**

### **THE PROVISIONING PROCEDURES**

#### **CHAPTER I**

#### **THE TYPES OF PROCEDURES**

##### **SECTION I**

##### **TYPES OF PROCEDURES**

### **Article 36**

#### **The pre-qualification procedure**

The pre-qualification procedure is the one that can be summoned by the Public Service with antecedence to the realization of a provisioning procedure, with the intent of identifying and selecting, by means of a preliminary analysis, which of the competitors meet the requisites previously established in the pre-qualification documents.

### **Article 37**

#### **Admitted provisioning procedures**

Under the terms and conditions of the decision in the present document, the provisioning procedures can be of the following types:

- a) Public bidding, required as an obligatory character in the procedures with a value equal or superior to USD 100.000 (one hundred thousand U.S. dollars), where any of those interested can present a proposal, as long as it gathers the required requisites in the bidding documents;
- b) Limited bidding by pre-qualification, where only proposals from those selected in the pre-qualification procedure are admitted;
- c) Restricted bidding, where only those invited can present proposals;
- d) By negotiation or proposals in two phases.

- e) By quote request;
- f) By direct adjustment;
- g) By simplified procedure.

## **SECTION II**

### **The bidding**

#### **Article 38**

##### **The National Public Bidding**

1. The national public bidding is summoned by the Public Service with the purpose of promoting the participation, as preferential competitors, of individuals or companies constituted in Timor-Leste, detained by at least 51% by East Timorese citizens.
2. In case the provisioning is relative to goods, works or services, with a value equal or inferior to USD 100.000 (one hundred thousand U.S. dollars) the bidding will be obligatorily national;
3. In the national bidding and all of the subsequent protocols, the legal currency used in the DRTL must be used, as well as the official languages.

#### **Article 39**

##### **The International Public Bidding**

1. The international public bidding is requested with the purpose of promoting the participation of competitors from all countries.
2. The international public bidding will be obligatory in the following cases:
  - a) Contracts for construction, whose estimated value exceeds USD 1.000. 000 (one million U.S. dollars);
  - b) Contracts for the purchase of goods or relative to technical services, whose estimated value exceeds USD 250.000 (two hundred and fifty thousand U.S. dollars);
  - c) Contracts for consulting services, whose estimated value exceeds USD 200.000 (two hundred thousand U.S. dollars).
  - d) After the closing of the announced deadline of a procedure by pre-qualification, where at least three competitors have not been pre-qualified.
3. After the closing of the announced deadline in a National Bidding, where no one has competed or been pre-qualified, or qualified, none of the competitors and by means of the previous fulfillment of the formalities in effect, the Public Service has the option of initiating an International Bid, without jeopardy to the decision as to the choice of other procedures.
4. People referred to in the previous article, subject to the equality of conditions and the fulfillment of the requisites established for the current procedure, can also present themselves for the international public bid.
5. In this public bid, the current legal currency of the DRTL is used.
6. The language to be used in the international bid must be English, without damage of the translations that must be made into Portuguese or Tetum.



**Article 40**  
**Limited bid by previous qualification**

1. The limited bid by pre-qualification can be initiated when the technical complexity or the high amount involved, require a prior evaluation of the financial, commercial and technical capacity of the competitors.
2. In this bid, the invitation for the presentation of proposals is directed to the competitors already admitted in the pre-qualification procedure.

**Article 41**  
**Restricted Bidding**

1. The restricted bid is the one directed to all the registered suppliers and that have determined qualifications and characteristics already known by the Public Service that initiates the procedure.
2. The restricted bid can be directed to all the registered suppliers, that are comprised in a determined geographic area or dedicated to a specific commercial activity, or that meet specific requisites required by the type of provisioning to be met.
3. A restricted bid can be requested, when the time and cost necessary to examine and evaluate a large number of proposals are disproportional to the small value of the works, goods, or services to be provisioned.
4. After the invitation and protocol, the Restricted Bid follows the same rules as the Limited Bidding by pre-qualification.

**Article 42**  
**Procedure by negotiation**

1. The procedure by negotiation takes place in two steps and exceptionally uses, in the case of supplying goods, complex works or services with special characteristics, the following situations:
  - a) Whenever it is not possible for the Public Service to determine with antecedence the technical and contractual specificities, due to the high level of specialization required to determine exactly the specific requisites of the goods, works or services, or the contingencies inherent to them;
  - b) When the Public Service needs to consider more than one proposal or technical option in order to decide which one better meets its needs.
2. This procedure is performed in two steps:
  - a) In the first step, the Public Service invites the competitors by means of a public announcement or, through an invitation directed to at least three competitor, so that they can present their technical plans, designs and studies, without prices, so that the Public Service itself can elaborate the specific requisites of the provisioning.
  - b) In the second step, the Public Service issues an invitation for the definite proposals, including the prices, later follow the same rules as the Restricted Bid.

**Article 43**  
**Procedure by request of quotes**

1. The provisioning procedure by request of quotes, is the one directed to at least three suppliers already known by the Public Service and can be used whenever the value of the contract is inferior to USD \$100.000 (one hundred thousand U.S. dollars) for goods, works or services of less complexity, which do not require technical specifications prepared in advance.
2. In this procedure, the choice of the adjudication of the contract is the responsibility of the Public Service itself without a bidding protocol.

**Article 44**  
**Provisioning by Direct Adjustment**

1. The provisioning procedure by Direct Adjustment is an exceptional procedure, through which the Public Service can direct to one or certain suppliers in order to satisfy specific provisioning needs and the previous existence of special circumstances under the terms of the decisions in articles 92 to 94.
2. In this procedure, the choice of the adjudicator of the contract corresponds to the Public Service itself without developing a bid.

**Article 45**  
**Simplified procedure**

1. The current expenses, namely those of consumable, water supply, telecommunications or electricity acquisition and, in general, all those that are periodic and previously registered in budgeted signatures that do not imply in a bid or the grant of a new contract or amendments of existing contracts, are considered simplified procedures in the present document, without damage to its adaptation and subjection to the established governmental policy.
2. For purposes of the previous number, the extent of the simplified procedure can be altered by ministerial dispatch, from the Planning and Finances Minister.

**SECTION III**  
**The choice of procedures**

**Article 46**  
**Qualification for the choice of the type of procedure**

The previous choice of the type of procedure has to be justified and is up to the qualified entity to initiate the procedure, except when the authorization of an entity hierarchically superior is mandatory, under the terms of the present document.

**Article 47**  
**The choice criteria**

1. The choice of the procedure must be determined by taking into account the value and according to the rules established in the present document.
2. The chosen procedure must be the most adequate for the satisfaction of the provisioning needs, under the terms of the present document.

3. Whenever possible, preference will be given to the public bid procedure.

## **CHAPTER II PROTOCOL OF THE PRE-QUALIFICATION PROCEDURES**

### **SECTION I PRE-QUALIFICATION PROTOCOLS**

#### **Article 48 The beginning**

1. The pre-qualification procedure begins with the publication of the pre-qualification announcement, inviting those who are possibly interested in competing.
2. Except for a legal imperative, the qualified authority to being the public bid, also has the authority to decide about having the pre-qualification procedure or not.
3. With the due adaptations, the pre-qualification procedure follows the common rules of protocol of the bids, including the participation of the organs in charge of opening the envelopes and the evaluation of the competitors.

#### **Article 49 Mandatory pre-qualification**

The pre-qualification procedure must be obligatorily effectuated in the following cases:

- a) Provisioning operations relative to equipment specifically conceived industrial facilities, specialized services, turnkey management contract, concept and construction or management contracts.
- b) In works whose value is superior to USD \$ 250.000 (two hundred and fifty thousand US dollars).
- c) Other cases foreseen in the law.

#### **Article 50 Requisites of the pre-qualification Announcements**

1. Every pre-qualification announcement must contain the basic information detailed in Annex No. 3 of the present document.
2. In the pre-qualification announcements, there should be no request or receiving of information from the competitors relative to:
  - a) Price proposals;
  - b) Design specifications;
  - c) Descriptive models of the technical characteristics;
  - d) Quality norms;
  - e) Methods of quality analysis;
  - f) Packaging;
  - g) Brands or other passwords and symbols;
  - h) Any other that might obstruct the participation of the competitors under equal conditions.

3. The announcement for pre-qualification, in its publication, observes the same rules applicable to the bid that it precedes.

#### **Article 51**

##### **The pre-qualification documents**

1. In the pre-qualification procedure, the pre-qualification documents must be provided to each competitor, so that they can present the necessary information to decide.
2. The pre-qualification documents must at least include the information established in Annex 4 of the present Law.
3. The pre-qualified competitors must maintain the filling out of the pre-qualification requisites and make them available in the forms and opportunities that are requested by the Public Service.
4. The price of the pre-qualification documents must reflect only the cost of its printing and its distribution to the competitors.

#### **Article 52**

##### **The amendments to the pre-qualification announcements**

1. Up to the third day prior to the date set as the deadline for the presentation of the pre-qualification documents and if there are exceptional reasons that justify it, the Public Service can make amendments to these documents, which must be published under the same terms and conditions as the pre-qualification announcement.
2. If necessary, the entity itself declares the procedure suspended and grants an extension of the deadline for the presentation of the pre-qualification documents.

#### **Article 53**

##### **The clarification about pre-qualification documents**

1. The competitors have the right to request, in writing, the clarifications from the Public Service about the pre-qualification documents, during the period established in the pre-qualification documents.
2. After receiving the request under the terms of the previous number, the Public Service must reply in the shortest time possible.
3. The reply to any request that might be of interest to all the other competitors, must be communicated to all of those to whom the Public Service has provided the pre-qualification documents without the source of the request being identified.

#### **Article 54**

##### **The additional verification of the requisites for pre-qualification**

1. The jury can exceptionally request that the competitor who has been pre-qualified to demonstrate, once again, his qualifications according to the same criteria used for the pre-qualification, setting the deadline when this verification must be done.
2. In this case, the deadline set for the end of the pre-qualification procedure must be extended, which must be communicated to all competitors.
3. The competitor that cannot demonstrate his qualifications once again, when requested from him, must be disqualified.

4. In the case of the previous number, the jury is forced to readily notify each competitor to whom a new demonstration of his qualifications is requested, to do so in a satisfactory manner.

#### **Article 55**

#### **The expiration of pre-qualification requisites**

The pre-qualified competitors must maintain the fulfillment of the pre-qualification requisites, and make them available in the forms and opportunities that is requested by the Public Service.

### **CHAPTER III PROTOCOL OF THE PROVISIONING PROCEDURES BY BID**

#### **SECTION I COMMON PROTOCOL RULES**

#### **Article 56**

#### **The steps of the Procedures by Bid**

1. The provisioning procedures through bidding, has the following common steps:
  - a) Opening and publication;
  - b) Prior verification
  - c) Receiving of proposals;
  - d) Public act of opening the envelopes with the proposals by the committee in charge;
  - e) Exclusion or admission of competitors by the jury;
  - f) Evaluation, choice and classification of the competitors by the jury;
  - g) Publication of intent of adjudication of the contract;
  - h) Period for competitor complaints;
  - i) Signing of the contract.
2. Regardless of the common steps established in the previous number, each bid follows the specific rules of its protocol established by law and the bidding documents.

#### **SECTION II OPENING AND PUBLICATION**

#### **Article 57**

#### **Opening of the Public Bid**

1. The opening of the bid is the step of the procedure where the Public Service summons, through an announcement, all of the potential suppliers, with the intention of their participation in the provisioning operation.
2. The announcements must at least include the elements contained in Annex 5.

**Article 58**  
**The bid program**

Through the bidding Program, the Public Service defines the dates when each step of the provisioning procedure will take place, from the opening of the bid to the signing of the contract.

**Article 59**  
**The Announcement for the Presentation of Proposals**

1. The announcement for the presentation of proposals consists of the summoning of people potentially interested so that they can present their proposals in order to be evaluated.
2. In the announcement for the presentation of proposals, the factors to be taken into account in the evaluation must be indicated and, whenever possible, the form as to how they will be quantified.
3. In the bid limited by pre-qualification, in the restricted bid and in the procedure by negotiation, the announcement is replaced by the invitation directed towards previously selected suppliers, which can or cannot be published according to the Public Service's decision that initiates the procedure.
4. The entity that has the authority to initiate the procedure, must sign the announcement or invitation.

**Article 60**  
**The invitation for the bid proceeded of the pre-qualification and for Restricted Bidding**

1. In the Bid Limited by pre-qualification, the Public Service invites the competitors that have already been pre-qualified.
2. This invitation must be accompanied of the Bidding Documents, in the terms established in the present document and in the specific complementary norms for this bid.
3. The jury in charge of evaluating the pre-qualifications is also in charge of evaluating the proposals.
4. Besides the established documents, it can be required from the pre-qualified competitors the presentation of the declaration of honor relative to whether or not he continues fulfilling those requisites and an update of the information initially required in the pre-qualification documents.
5. In the case of a contract with a value superior to USD \$100.000 (one hundred thousand US dollars), the pre-qualified competitors must also include in their declaration of honor the following aspects:
  - a) Access to lines of credit, availabilities and other financial resources;
  - b) Work orders and contracts obtained after the pre-qualification notification;
  - c) Litigation in course where the competitor is involved;
  - d) Availability of equipment and personnel to fulfill the contract in case it is adjudicated.
6. In the Restricted Bid, the invitation is solely directed to the suppliers previously selected by the Public Service.

**Article 61**  
**The publication of Announcements**

1. With the intent to guarantee the information of those interested, the publication of the announcements is mandatory in the following provisioning procedures:
  - a) National Public Bid
  - b) International Public Bid
  - c) Pre-qualification procedures.
2. The publication of the announcements is subject to the following rules:
  - a) All the announcement referred to in No. 1 must be published in organs of the press;
  - b) The announcement for the national public bid must be published in at least on newspaper with national circulation, in Portuguese or Tetum;
  - c) The announcement for the international public bid must be published in at least two newspapers with international circulation with renowned prestige, in English or other foreign languages used in international business as well as in a newspaper with national circulation, in Portuguese or Tetum;
  - d) The announcements are sent simultaneously to all means of communication where the publication is intended.
3. Without the damage of the obligation of the printed publication in newspapers, the announcements can be also published in other means of communication and by computer means, in conformity with the norms and procedures to be established for e-commerce.
4. In the other protocols of the provisioning procedure, required for publication, the rules of this article with the proper adaptations are applied.

**Article 62**  
**The Bidding Documents**

1. According to the established program and during the term fixed in the announcement, the Public Service must provide a set of documents for each competitor.
2. The minimal requisites of the Bidding Documents are described in Annex 6 of the present document.
3. The price of these documents must reflect only the cost of its printing and its distribution to the competitors.

**Article 63**  
**The Previous Verification**

1. According to what is established in the Bidding Documents, the Public Service must have a Previous Conference on a set date and time in order to clarify all the details relative to the procedure in course.
2. The previous conference has a public character.
3. In the previous conference, there are no linked verbal instructions that might alter the content of the bidding documents.

4. When, as a result of the Conference, it is necessary amend or alter some of the terms of the bid, this decision must be made at a later time by the Public Service and sent in writing, simultaneously to all the competitors.
5. In case it is necessary, the previous Conference can include the visit to the place where the goods, the execution of works or the service being provided will be supplied.

### **SECTION III THE RECEIVING OF PROPOSALS**

#### **SUBSECTION I THE PROTOCOLS OF THE RECEIVING OF PROPOSALS**

##### **Article 64 Essential elements of the proposals**

1. The proposals must be presented according to the required requisites in the "Bidding Documents", prepared for each specific procedure.
2. The price is indicated in algorithms, followed by its amount in written form, prevailing, in case of divergence the amount in its written form.

##### **Article 65 The setting of the deadline for the handing in of proposals**

1. The deadline for the delivery of proposals must be set according to the type of provisioning procedure used and within the limits established in the complementary norms, according to the type of procedure applied.
2. The Public Service can postpone the initial deadline for an adequate period when there are justifiable reasons.
3. The postponements that are determined by the determination in the previous number include all competitors and all of them must be promptly and simultaneously informed.

##### **Article 66 Delivery and registration of proposals**

1. The proposals are delivered directly or through registered mail, and must be received before the deadline at one of the places announced for its delivery.
2. If so stated in the announcement or invitation, the delivery by other means of communication is admitted, namely by fax or e-mail, whenever it is adequate and possible in terms of volume or the type of documentation.
3. In the previous number's case, the acceptability of the documents sent by fax or e-mail is subject to the requirements established in the norms and procedures about e-commerce in effect in the country.
4. The receiving of proposals must be recorded, taking note of the time and date of the arrival and the order number of presentation, on the packages or envelopes that contain them.
5. The received proposals must be kept in a safe place with limited access, only for authorized personnel.



**Article 67**  
**The presentation**

1. Each competitor can present only one proposal.
2. The expenses with the presentation and submitting the proposal are the responsibility of the competitor, regardless of the result of the bid.
3. The proposal is presented in individual, opaque, closed and separate envelopes according to the instructions indicated in the bidding documents.

**Article 68**  
**Expiration date of the proposals**

1. The expiration date for the proposals must be sufficient to allow the comparison as well as evaluating them and obtaining all the necessary approvals so that the contract can be signed during the referred period.
2. Each competitor must submit his proposal, as well as the guarantee of valid bids for the period specified to the Bidding Documents.

**Article 69**  
**The extension of the expiration date**

1. Exceptionally and before the expiration date for the proposals, the Public Service can request that the competitors postpone the expiration date of the respective proposals for a period of up to four weeks.
2. The competitor has the right to refuse the request without losing his guarantee of participating in the bid, but the expiration date of his proposal will end on the date initially set.
3. The competitor that accepts an extension of the expiration date of his proposal must prolong the expiration date of the guarantee of the bid or present a new one that covers the extended period added, assuming that otherwise, as refusing the extension period.

**Article 70**  
**The modification of proposals**

1. Except if stipulated differently, the competitor can modify or withdraw his proposal before the expiration date for the presentation of the bidding documents without losing his bidding guarantee.
2. The modification or notification of the survey of the proposal is effective if it is received by the Public Service before the deadline for the presentation of the bidding documents.

**Article 71**  
**The closing of the announcement or invitation and respective effects**

1. After the expiration date of the presentation of the bidding documents containing proposals, at the indicated time, the Public Service must declare it closed, recording this act in a document.
2. A proposal received after the deadline is returned to the competitor without opening it, according to the established procedures.

## **SECTION IV GUARANTEES OF THE BID**

### **Article 72 Guarantee of the bid**

1. Each competitor must give a guarantee of the validity of his proposal during the period established in the bidding documents.
2. This guarantee can be required up to the limit of 10% of the proposals value and begins on the date of the presentation of the proposal.
3. The expiration date of the bidding guarantee must be the required for the evaluation of the proposals and the fulfillment of other indispensable protocols until the adjudication of the contract.
4. This guarantee must be immediately returned to the competitors who have not adjudicated the contract.
5. The Public Service must retain the guarantee of the bidding presented by the competitor that it intends to adjudicate the contract until it is replaced by the execution guarantee.
6. The Public Service can convert the bidding guarantee into an execution guarantee, in case the competitor that is being adjudicated to the contract does not present the latter in the established time, without damage to his obligation of paying the difference between the two guarantees.

### **Article 73 Forms of Guarantee of the Bid**

The presentation of the bidding guarantee can be required in the form of letters of credit or guarantees from a suitable bank or financial institution or insurance company, according to the following rules:

- a) The requirement must be made equally to all the competitors;
- b) It must be stipulated in the bidding documents the conditions relative to the issuer or guarantor, as well as the terms and the form of the guarantee, in order to be considered acceptable;
- c) The guarantees have to express the clause of irrevocability;
- d) In case the guarantee and the issuer meet the requisites established in the bidding documents, it cannot be rejected based on what was issued by individual or company with headquarters abroad.

### **Article 74 The confirmation of the issuers of the Guarantee**

1. The competitor has the right to ask the Public Service to confirm, in writing, the acceptability of an issuer of a guarantee or of a guarantor and also receive a reply, in writing, in the shortest time possible about this request.
2. This confirmation of acceptability does not impede the Public Service from rejecting the guarantee based on the fact that the issuer or guarantor, according to the case, has become insolvent or has lost his credit.

**Article 75**  
**The loss of guarantee of the bid**

1. The competitor will lose his right to claim the return of the bidding guarantee, when it incurs in a conduct that jeopardizes the Public Service, namely when:
  - a) The proposal is withdrawn or modified during the validity period of the proposal or after the contract has been adjudicated;
  - b) The payment of the execution guarantee of the contract is not paid in full, under the terms foreseen in the bidding documents;
  - c) Any other condition preceding the signing of the contract is not met, specified in the bidding documents;
  - d) If, without justification, does not sign the contract on the date set by the Public Service;
2. The declaration of the deposited guarantee and its causes, the competitor is notified in writing within the agreed deadline.

**Article 76**  
**The return of the bidding guarantee**

1. The bidding guarantee must be returned quickly when the reason for its deposit no longer exists.
2. The Public Service must return within the agreed period the guarantee document after one of the following facts has occurred:
  - a) The termination of the bidding guarantee;
  - b) The termination of the provisioning procedures without a provisioning contract going into effect in favor of the competitor;
  - c) The withdrawal of the proposal, before the deadline for the submission of proposals, except if the bidding documents stipulate that such a withdrawal is not allowed.

**SECTION V**  
**THE OPENING OF THE ENVELOPES**

**Article 77**  
**The Opening Committee**

1. The Public Service that begins the procedure of pre-qualification or bidding, must nominate a committee in charge of opening the envelopes.
2. This Committee must be formed by at least the Public Service employees, among which one must be nominated as its chairman.

**Article 78**  
**Public act of opening the envelopes**

1. On the day set in the pre-qualification or bidding documents, in a public act, the Committee in charge proceeds with the opening of the envelopes.

2. Any person interested can attend the public act, where no interventions from those present are allowed.
3. In the pre-qualification procedures, the act is initiated with the reading of the identification of the procedure, proceeding with the opening of the envelopes and, immediately after, the list of competitors is written, in view of all those present.
4. In the public bidding, the act is initiated with the reading of the bidding identification, proceeding with the opening of the envelopes and, immediately after, the list of competitors with the prices offered is done, which is written down in view of all of the participants and read out loud, making a copy of this list to be given to the jury.
5. Afterwards, the Committee gathers the documents, handing them over to the jury, or safekeeping them until they are handed to the jury.
6. The Committee that opens the envelopes must hand the entire documentation to the jury, at least by the next day of the opening.

## **SECTION VI THE BIDDING JURY**

### **Article 79 Nomination and constitution of the Bidding Jury**

The jury is designated by the competent entity to initiate the procedure and is constituted by at least three members, and a replacement member, one of which is designated as chairman and another one as his replacement in cases of impediment, always in an odd number.

### **Article 80 Competence of the Bidding Jury**

The competencies of the jury are:

- a) Fundamentally admit or exclude the competitors based on the required requisites in the pre-qualification and/or documents according to the case.
- b) Decide about the pre-qualification of the competitors in the procedure of this nature, based on the required requisites in the Pre-qualification Documents;
- c) Evaluate the proposals and qualify the competitors according to the selection criteria that are defined in the bidding documents;
- d) Evaluate, choose and qualify the competitors.
- e) Propose the competitor to adjudicate the contract.

### **Article 81 Operation of the Bidding Jury**

1. The jury is considered functional after the first business day after the opening of the pre-qualification or bidding documents.
2. The jury may request a secretary to the entity that nominated it, to transcribe the minutes of the meetings and deal with the proceedings, where the causes for the exclusion of competitors must be included.

**Article 82**  
**Admission and exclusion of competitors**

1. In a private session, the jury proceeds with the signature or stamp of the bidding documents, moving on to their analysis.
2. After the analysis, the jury deliberates about the admission or exclusion of the competitors as well as their qualification.
3. The criteria to be taken into consideration by the jury are previously established in the pre-qualification or bidding documents, according to the case.

**Article 83**  
**The Reading of the Lists**

Before ending the jury's private session, its chairman makes a list of the admitted competitors, as well as one for those excluded, explaining the reasons and justifications, albeit summarized.

**Article 84**  
**The examination of the proposals**

1. In the bidding procedures, the jury proceeds with the examination of the documents in a private session.
2. The excluded proposals are those that:
  - a) Are presented by the same competitor;
  - b) Are not in accordance with the requirements expressed in the bidding documents.
3. In bidding procedures, the chairman of the jury will then reveal the total price of each one of the admitted proposals and their essential aspects.

**SECTION VII**  
**THE EVALUATION, CHOICE AND CLASSIFICATION OF THE COMPETITORS**

**Article 85**  
**The evaluation in pre-qualification procedures**

1. Based on the requisites required in the pre-qualification documents, the jury determines the pre-qualified competitors.
2. The final classification list is obligatorily done and written down in the final minute with the respective individual justifications, which counts as the procedure's report.
3. This list is sent to the Public Service and is published in the same terms as established in article 89.

**Article 86**  
**The evaluation and choice in the bidding procedures**

1. The main objective in the bidding procedures is the selection of goods, services and works, with the best quality/price relationship, where the price of the purchase is only one of the criteria in the choice of the adjudicator.
2. The cost/benefit relationship implies in a comparison of cost/benefits during the durability of the goods, in other words, the total cost of each good, service,

construction or consultation during the respective economic lifetime and not only at the time of the purchase.

3. The essential criteria to be taken into consideration in the analysis of the proposals, based on the best cost/benefit are the following:
  - a) Technical and professional analysis, in other words, the susceptibility of the good or service to fulfill the functional and performance requisites, taking into account the following factors:
    - i. Meet the essential and desirable requisites;
    - ii. Client service, including support and maintenance during the goods' life cycle;
    - iii. Quality guarantee;
    - iv. Capacity of execution;
    - v. Previous experience and performance;
    - vi. Strategic matters, namely local and financial capacity
  - b) Commercial analysis, in other words, the proponent's reliability and the respective capacity of reducing the State's risk, taking into account the following factors:
    - i. Timorese nationality or association with Timorese and professional credibility and reputation;
    - ii. Financial capacity
    - iii. Risk management, including insurance and the use of authorized sub contractors;
    - iv. Conformity with the conditions of the contract
    - v. Conflicts of interest
    - vi. Historical record of commercial relations with the State.
  - c) Industry and local development must also be one of the requisites to be in the announcements where the proposals must be evaluated and classified according to the following impacts:
    - i. Promotion of industry and business capacity in Timor-Leste
    - ii. Support to medium and small Timorese business in order to ascend in the State's purchasing market and capacity to supply goods and maintenance during their respective life cycle;
    - iii. Number of jobs to be created for the Timorese
    - iv. Level of transference of capacity and technology
    - v. Proportion of goods and services acquired locally;
    - vi. Opportunities for regional and district wide development;
    - vii. Local capacitation or programs supported by the candidate.
  - d) Financial analysis for the entire life cycle period of the goods, in other words, the total cost of each services, good or construction, during its respective economical life cycle and not only the purchase price, avoiding cheaper products or services or of inferior quality that can cost more in the long run due to maintenance costs, where these costs must be reduced to a series of common factors that make the rational comparison of the proposals easier, taking into consideration the capital

costs including purchase price, assembly, making it operational and training such as, the operational costs, namely salaries, maintenance, the cost of energy and licenses;

4. For the bids that exceed USD \$100.000, a commitment declaration is required from the competitors, which must emphasize the commitment of creating local jobs, the transference of knowledge and technology for the local workers and the proportion of goods and services acquired at a local level and should be part of the contract's annex as adjudicator.
5. The provisioning services must develop provisioning criteria based on the principles of this article, appropriate for the bids, creating numeric scales for these evaluation criteria. The financial analysis, specifying the costs does not count as points. The general rules and specifications of each bid must be part of each bidding documentation, and the specific criteria for evaluation will also have to be included in the bidding invitations.
6. The proposals must be submitted in two envelopes; envelope one must answer technical and professional criteria, commercial and industrial analysis and local development. Envelope two must contain the value of the proposal.
7. The competitors must be integrated in a final list based on their capacity to meet the requisites foreseen for the criteria of envelope one. This demonstrates the Governments commitment to give the highest priority to value instead of price, through the company's professional and technical capacity, the respective commercial stability and the capacity to improve the local and regional development of Timor-Leste. Only afterwards, will the jury consider the content of the financial cost included in envelope two.
8. Envelope two will be opened relatively to the first two classified in the short list.
9. The chosen candidate will be evaluated based on the fulfillment of the foreseen criteria in envelope one and in the underlined price in envelope two.
10. The Minister of Finances must promote periodic audits to verify that the provisioning norms foreseen in this article are being met.

### **Article 87**

#### **Analysis by the Contracting Committee and other instances**

1. Whenever it is up to the Contracting Committee to ratify the jury's decision, the report of the current procedure must be handed to the chairman of this committee within 3 days after the jury's choice is concluded.
2. In the same way, in case the Contracting Committee's decision has to be ratified by superior entities, they must do so within seven days, counting from the date that the report is received.
3. The jury is maintained constituted until its adjudication proposal is ratified or rejected.
4. In case the jury's decision is ratified, the recommendation must be sent by the approving entity and, if necessary, to the entity qualified to sign the contract.
5. In case the jury's decision is rejected, the Contracting Committee must justify the reasons for its decision and send it to the jury for a new analysis.
6. In the situation of the previous number, the jury can propose the second qualified competitor and so on.

7. The Contracting Committee can reject the jury's decision based on the justifications referred to in No. 6 of the previous article.

**Article 88**  
**The rejection of all the proposals**

1. The Public Service has the right to reject all offers submitted, at any moment before the adjudication of the contract, where this decision must be informed to each of the competitors, not being obligated to justify the reasons.
2. In case this right is invoked, the Public Service does not incur in responsibility towards the competitors.

**Article 89**  
**Publication of the decision**

1. The notification relative to the jury's decision, containing the pre-qualified competitors or the intention of adjudicating the contract to one of the competitors, is affixed in the normal places of the Public Service that initiated the procedure, indicating in a summarized manner, and the reasons for its choice.
2. This notification must remain visible to the public for at least five days for pre-qualification procedures and for bidding procedures, at least fourteen business days after its publication.

**Article 90**  
**The abandoned proposal**

1. When the elected competitor, qualified in first place, after being duly notified, does not sign the contract or does not provide the guarantee of execution of the contract on the date set for these protocols, his proposal must be declared as abandoned, with a declaration of loss of the bidding guarantee in favor of the adjudicating entity.
2. In the situation of an abandoned proposal, the Public Service can opt for one of the following variants:
  - a) Use its right to reject all of the proposals according to what is established in the present document;
  - b) Select another valid proposal, according to the results obtained in the evaluation phase, and go through all the protocols of acceptance and notification for a adjudication of the contract at a later time.

**CHAPTER IV**  
**PROTOCOLS OF THE PROCEDURES WITHOUT BIDDING**

**Article 91**  
**The procedure by request of quotes**

In the procedures by request of quotes, the final proposals must be evaluated and compared by the Public Service itself in order to choose according to the following general rules:

- a) The proposal with the lowest price, subject to any margin of preference applied to the national competitors or for the benefit of proposals that involve local products;



- b) The proposal with the best quality/price ratio, from companies that are not in debt with the State because of previous contracts considered to be unfulfilled, demonstrate a specialization in the area of the activity they are candidates for and have all fiscal contributions up to date.

### **Article 92**

#### **The protocols for the provisioning by Direct Adjustment**

1. The Public Service can opt for the direct choice in the following cases:
  - a) Cases of urgency in the sequence of unpredictable event that puts the public health and safety in jeopardy;
  - b) When there are no proposals or no proposals that meet the criteria foreseen for the participation;
  - c) When there is no bid for technical reasons;
  - d) When the goods or services can only be supplied by a specific entity and there are no reasonable or replacement alternatives on the market;
  - e) For additional supply of goods and services that have the purpose of replacing of parts, the extension or continuation of services or goods for existing equipment, software, services or facilities where the replacement of the supplier would result in the acquisition of goods and services that do not meet the adaptability or compatibility requisites;
  - f) When directed to obtaining of a prototype for an original service or good or for purposes of limited experimentation or that is created for a private contract for an original research, experiment, study or creation;
  - g) For the protection of patents, copyrights or other exclusive rights or intellectual property;
  - h) For goods acquired in a commodities market or for purchases under advantageous conditions, including innovating unsolicited proposals;
  - i) As a result of a design competition.
2. The documentation of all the operations is obligatory, as well as the circumstances that justify the use of this procedure.

### **Article 93**

#### **The limitations in the use of the procedure of Direct Adjustment**

(Revoked)

### **Article 94**

#### **Direct adjustment for emergency purchases**

1. The Public Service can use the emergency purchase procedure when:
  - a) There is an urgent, unpredictable and unprovoked need, not caused by the beneficiary of the provisioning in relation to the works, the goods or services, making it impractical to initiate bidding procedures or any other provisioning methods;
  - b) In case of an official declaration of catastrophe or situation of emergency, which impose the need for works, or the supply of goods or receiving services to avoid

the loss of lives, the loss of Government property, or other demands that for the urgent action in the public interest.

2. In this case, the Public Service must contract by direct adjustment only the goods, the works or services that are strictly necessary in order to remedy the situation of emergency and respond to the immediate needs.

#### **Article 95**

##### **The protocols of the simplified procedures**

1. The top directors of the entities mentioned in article 15 can delegate other directors the realization of current periodical provisioning expenses, that are properly budgeted, up to the amount of USD \$ 5.000 (five thousand US dollars), without exemption of the consultation of availability of goods or services by the Patrimony Supply Center.
2. The protocols of the simplified procedures are established in the complementary norms of the Ministry of Finances.
3. The directors of entities authorized to operate in a decentralized manner and according to the simplified procedures, are in charge of managing and controlling the development of these operations and assume the responsibility of approving and signing the contracts within their legal competencies, without damage to those activities they delegate under the terms of the law.

### **CHAPTER V**

### **COMPLAINTS AND APPEALS**

#### **Article 96**

##### **Complaint rights**

1. The competitors that feel affected during the course of the provisioning procedure, have the right to present a complaint to the Public Service for the following causes:
  - a) The non-adherence to the rules established in the present document or its complementary norms;
  - b) The non-fulfillment of the terms and conditions declared in the pre-qualification or bidding documents;
  - c) The non-conformity with a decision adopted by the jury, which he might have violated as legal norms in effect.
2. In the cases of paragraphs a) and b) of the previous number, this complaint must be made within 5 days after the fact that originated it.
3. In the case of paragraph c) of number 1, the deadline for complaints must be fixed in the pre-qualification or bidding documents and also warned in the notification publication of the decision.

#### **Article 97**

##### **The competent entity to recognize the complaint**

The entities authorized to initiate provisioning procedures are competent to know and solve the complaint referred to in the previous article, relatively to the procedures under their charge.

## **Article 98**

### **The protocol for the presented complaint**

1. The Public Service must receive the complaints presented and decide about its admission within five days.
2. The only reason to declare the non-admissibility is its presentation after the established deadline.
3. Once the complaint is admitted, its admissibility is decided within two days and later, the suspension of the procedure is decided.

## **Article 99**

### **Suspensive effects**

1. The competent entity can suspend the provisioning procedure for five days, when a protest from one of the competitors is received.
2. The competent entity can postpone the suspension term for the maximum period of five days whenever there are reasons that justify such a decision.
3. As long as there is no decision transiting in the administration, relative to the complaint or the hierarchical appeal, there can be no continuation of:
  - a) In bids, the opening of the envelopes that contain the proposals;
  - b) In the procedure by negotiation, the realization of a negotiation session;
  - c) The adjudication, in all the procedures.
4. The judicial appeal does not produce suspension effects.

## **Article 100**

### **The decision about the complaint presented**

1. After the case is analyzed, the competent authority must decide if he accepts or rejects the complaint within a period of 12 days.
2. The decision about the complaint must be featured in a document with a mention of the justifications that were taken into account as well as all the announcements that correspond according to the rights, and will be immediately notified to all of those concerned.

## **Article 101**

### **The right for a hierarchical appeal in the case of a complaint**

1. The competitors, who do not agree with the decision made regarding their complaint, can make a hierarchical appeal to the competent authority within five days after the date of the decision notification regarding their complaint.
2. The hierarchical appeal can suspend the procedure for the maximum period of five days.

## **Article 102**

### **The entities competent to decide the hierarchical appeal**

1. The top directors of the other sovereign organs, are competent to know and decide on the hierarchical appeals in terms of provisioning, as well as the Ministers and

Secretaries of State under the terms of the respective organic laws, regarding mediated appeals against the decisions adopted by:

- a) The directors expressly nominated and by them authorized to perform provisioning operations.
  - b) The top directors of the Autonomous Services, the public entities and other organisms endowed with administrative and financial autonomy that is subordinated to them;
  - c) The other collective persons, with participation in the State's capital superior to 50%, which albeit have a business nature, proceed with eminently public purposes;
2. The Prime-Minister is the competent entity to know and solve the hierarchical appeals in terms or provisioning, presented against the decisions adopted in the first instance by the top directors of the other sovereign organs, as well as Ministers and Secretaries of State.
  3. In cases where the Contracting Committee must perform an evaluation for the approval of the contract, before solving the hierarchical appeal, this Committee must be heard beforehand, regarding the complaint presented.

### **Article 103**

#### **The decision about the hierarchical appeal**

1. After the case is analyzed, the competent authority must decide if it accepts or rejects the appeal presented, within a period of five days.
2. The decision about the appeal presented, must be included in a document with a mention to the justifications that were taken into account as well as all the announcements that correspond according to the rights and will be immediately notified to those concerned.
3. The judicial contentious appeal does not produce suspensive effects.

### **TITLE III**

#### **SPECIAL AND TRANSITORY DETERMINATIONS**

### **Article 104**

#### **Patrimonial Declaration**

Each public employee or agent of the Public Administration of the services in charge of provisioning operations, must present a declaration of the assets that are part of his personal patrimony and of his spouse or life partner, within the terms to be established in an aggregated document of the Ministry of Planning and Finances and the Ministry of State Administration.

### **Article 105**

#### **Contracts of professional services, for concept or consulting jobs**

The professional services to be provided by citizens of the DRTL, to meet the needs of the Public Services, are ruled by the Public Function Statute and its complementary norms.

### **Article 106**

#### **Special regimes**

All the Ministries that have within their respective competence range, the activities related to number 3 of article 2, in a 90-day term, after the present law goes into effect, must submit to the Minister Council the proposals of a document of the special judicial regimes for the provisioning, maintaining the current regime with a transitory characteristic for them.

**Article 107**  
**Previous consultation duty**

1. All the Public Services decentralized or not, must consult the procedure beforehand, the availability of goods to be acquired from the services of the State's Patrimonial Supply Center.
2. The decision in the previous number, does not link public companies.

**Article 108**  
**Complementary instructions**

The Minister of Planning and Finances has the authorization to issue the complementary instructions with a general characteristic that are necessary for the implementation of the present document.

**Article 109**  
**Altered norms**

No. 2 of article 16 and article 36 of Law No. 14/2003 on September 24, which regulates the Public Companies, will have the following text:

"Article 16  
Patrimony

1. [...]

2. The public companies administer and freely make available of the assets that are part of their patrimony without being subject to the norms relative to the State's private domain, except for the special decisions contained in the respective statutes and in the Provisioning Judicial Regime, which must adjust themselves in their operations.

"Article 36  
Subsidiary right

"The public companies are ruled by the present law, by the respective statutes and whatever is not especially regulated, by private right norms, as well as by the Provisioning Judicial Regime."

**Article 110**  
**The public contracting regime**

The specific rules in terms of public contracts are established in a document from the Government.

**Article 111**  
**Administrative infractions**

The specific rules in terms of administrative infractions to the provisioning judicial regime and of the public contracting are established in a document from the Government.

### **Article 112** **Revoking norm**

The UNTAET Regulation 2000/10 about Acquisitions for the Public Administration of Timor-Leste and any other decisions contrary to what is established in the present document is revoked.

### **Article 113** **Initiated procedures**

The provisioning procedures already initiated at the moment the present law went into effect, continue their protocol by the rules previously in effect up to its end.

### **Article 114** **Scaled implementation of the decentralization**

1. The decentralization for provisioning operations, foreseen in the present document, begins to be implemented gradually in the authorized entities, after the specific analysis of each one of them and by means of approval by the Minister of Planning and Finances.
2. The rules of the gradual process of entry of the organs in the decentralized acquisition system can be established by ministerial document from the Ministry of Planning and Finances.

### **Article 115** **Going into effect**

The present document goes into effect sixty days after the date of its publication.

## **ANNEX 1** **Additional definitions related to the provisioning**

**Adjudicated:** The Public Service that opens the bid with the intention of signing a public contract. It is also denominated as the “adjudicating entity”.

**Adjudicator:** The individual or company that received the adjudication of the public contract. Also would denominate as supplier or provider.

**Bid:** The procedure prior to the public contract, which is performed with the intention of an impartial choice of the adjudicator by a jury.

**Decentralization:** For provisioning effect, is the competence belonging to the Public Services to initiate provisioning procedures and grant public contracts, with the intention to meet their needs.

**Entities:** For effects of the provisioning regime, any organ, public service institution, or similar, that has the capacity to sign public contracts.

**Beneficiary entity:** Under the terms of the present document, any entity, organ, public service institution or equivalent, that receives the supply of goods or the provision of services.

**Issuer or Guarantor:** For the effects of this document, the individual or company that replaces the competitor forced to pay one of the guarantees mentioned in this law.

**Bidding guarantees:** The monetary amount or the equivalent financial instrument, required from the competitor as a protection of the Public Service against the risk derived from eventual withdrawals or modifications of the proposals presented.

**Execution guarantee:** The monetary amount or the equivalent financial instrument, required from the adjudicator of the contract, as a protection of the adjudicating entity against the risks derived from eventual faults in fulfilling the public contract.

**Provisioning Operations:** Any of the actions used to get supply of goods or the provision of services.

**Provisioning Procedure:** All the protocols that are made in order to guarantee the acquisition of goods and services, or the execution of works with public purposes.

**Bidding Procedures:** All of the procedures where the adjudication of the contract is done by means of an evaluation by the jury.

**Proposal:** It is considered as such, the offer submitted by the competitor in a provisioning procedure, by means of fulfilling the requisites and documents required by law.

## ANNEX 2

### Restriction amounts to initiate the provisioning operations, evaluate and approve the signing of public contracts (Article 15)

Entity that initiates the provisioning procedure	Organs of adjudication ratification and signature of Public Contracts	
Provisioning Service by request of the interested Public Service	Review	The Prime-Minister, in contracts with a value equal or superior to \$ 1.000.000
	Contracting Committee for contracts equal or superior to \$ 200. 000	Ministry of Planning and Finances, in procedures with a value up to \$1.000.000 Provisioning Service by delegation of the MF between \$ 200. 000 and less than \$ 1.000. 000
Members of the Government and top directors of the other Sovereign Organs, up to \$ 10.000 or up to \$ 1.000.000 in the cases in article 20.	Provisioning Service by delegation of the MPF	
	Top directors of the other sovereign organs, Ministers and Secretaries of State	

Top directors of the Autonomous Services and competent public entities, up to \$ 10.000 or up to \$ 1.000.000 in the cases in article 20.		The top directors of the Autonomous Services, the public entities and other organisms endowed with administrative and financial autonomy, including companies with mixed capital.
Directors expressly nominated and authorized to up to \$ 5.000		Directors expressly nominated and authorized by top directors of the sovereign organs and by Members of the Government, including all the other previously unmentioned organs and public services
Leasing with annual revenue equal or superior to \$ 100.000	Provisioning service by request of the interested Public Service	Like the levels established for the other provisioning procedures  The leasing of property abroad requires the authorization from the MPF and the MNEC
Leasing with annual revenue inferior to \$ 100.000	Interested Public Service	

### **ANNEX 3**

#### **REQUISITES OF THE PRE-QUALIFICATION ANNOUNCEMENTS**

The announcements for the beginning of a pre-qualification procedure, which refers to Article 50 of the present law, must have at least the following information:

- a) The name and address of the Public Service;
- b) Issuing place and date and the authorizing authority;
- c) Unaltered declaration of the type of bid;
- d) Declaration that it is about a pre-qualification Announcement, as well as the required legal requisites;
- e) The goods or services whose provisioning is submitted to a bid, including general requisites of quantity and quality;
- f) Date and place planned to receive the provisioning;
- g) The pre-qualification procedure program, the means to obtain pre-qualification documents, as well as where they can be obtained;
- h) The price of the printed matter, if any, charged by the Public Service, list of the pre-qualification documents and forms.
- i) Available languages for the documents;
- j) The place and deadlines to submit the pre-qualification documents;
- k) The notification date of the pre-qualification results;



l) Any other information that in the judgment of the Public Service is useful to offer about the bid or is regulated by the specific applicable norms and procedures.

#### **ANNEX 4**

### **PRE-QUALIFICATION DOCUMENTS**

The documents of the Pre-qualification Procedure, listed in Article 51, must at least be the following:

- a) Instructions for the preparation and submission of pre-qualification requests;
- b) A summary of the main general terms and conditions regarding the contract to be signed;
- c) Any documental evidence or other information that must be submitted by the competitors in order to demonstrate his qualifications and the required requisites in this law;
- d) Documents relative to the fulfillment of any other specific requisites that might be established by the Public Service in accordance with the norms in effect.

#### **ANNEX 5**

### ***REQUISITES OF THE ANNOUNCEMENTS OF THE OPENING OF THE BID***

The Announcements of the Opening of the Bid referred to in Article 57 of the present law, must contain the minimal following information:

- a) The name and address of the Public Service that begins the bid, place, issue date and the authorizing authority;
- b) Inalterable declaration of the type of bid;
- c) Declaration that it is about an Announcement of the Opening of a Bid;
- d) Address, days and hours to acquire the Bidding Program, which have not been published along with the Announcement.

#### **ANNEX 6**

### ***BIDDING DOCUMENTS FOR THE PRESENTATION OF PROPOSALS***

***The bidding documents for the presentation of proposals referred to in Article 62 of this document, must include at least the following information:***

- a) Instructions for the preparation and submission of proposals
- b) Characteristics of the goods or services, which are the object of the bid, requesting as minimal information relative to:
  - 1) Quantity;

- 2) Demandable quality requisites;
- 3) Design specifications and other requisites required for the handing in and presentation of the plans and other technical documents in case they are necessary;
- 4) Descriptive models of the technical characteristics of the goods or services to be acquired;
- 5) Analysis methods of their quality, in order to determine their adjustment to required specifications;
- 6) Packaging
- 7) Markings or other passwords and symbols.
- 8) Price proposals, which must be sent in a separate envelope.
9. Date and place for the fulfillment of the obligations;
10. Methods and procedure to evaluate the qualification of the competitors, according to foreseen in the present law, and in the applicable norms and procedures;
11. Conditions of the Guarantee of validity of the offer, in relation to the issuer and the nature, form, amount and expiration, and the way to satisfy it.
12. Conditions of performance Guarantee regarding the issuer and the nature, form, amount and expiration, and the way to satisfy it.
13. Any other information that, according to the Public Service's judgment, is useful to offer about the bid.
14. A summary of the main terms and conditions necessary in relation to the contract to be signed, not included in the pre-qualification procedure if that is the case.
15. Any documental evidence or other information that must be submitted by the competitors to demonstrate their qualifications, and the other required requisites, if it wasn't done during the pre-qualification procedure;
16. Notary power that authorizes the presenter of the proposal to be obliged in the name of the competitor, in case this capacity is not demonstrated in the other accompanying documents.
17. In the cases that the competitor is an association, group or any other organ with more than one person, along with the submission of the proposal, a document proving that it assumes the responsibility for the actions of the common representative along with the agreement or constitutive document.
18. Declaration about the goods works or services that need the subcontracting of other entities for the fulfillment of the main object of the contract, whenever they had this possibility included in the conditions of offer submission.

19. Any other documents necessary to demonstrate the fulfillment of the specific requisites established by the entity that initiates the procedure.