



**DEMOCRATIC REPUBLIC OF TIMOR-LESTE
GOVERNMENT**

DECREE- LAW No. 12/2005

**ADMINISTRATIVE OFFENCES UNDER THE LEGAL REGIME OF PUBLIC
PROCUREMENT AND THE LEGAL REGIME OF PUBLIC CONTRACTS**

The control of the procedures governing public procurement and those governing public contracts are very closely bound so therefore coherent legal instruments must exist in order to guarantee the appropriate development of both activities.

The consolidation of an efficient system governing public procurement and public contracts, based on the principles of legality and transparency, requires that standards be established which are able to increase the discipline of the those involved.

For the reasons mentioned above, those conducts which constitute administrative offences in this area should be defined, as well as the measures applicable in each case.

The Government hereby decrees, pursuant to no. 1, sub-paragraph e) of article 115 and sub-paragraphs a) and d) of article 116 of the Constitution of the Republic, that the following become law:

**CHAPTER I
GENERALITIES**

**Article One
Objectives**

The objective of this diploma is to hereby define the conducts which shall constitute an offence under the Legal Regime governing Public Procurement and that governing Public Contracts and to establish the measures applicable and the means to contest.

Article Two

Scope

This diploma shall apply to all natural or legal persons who take part in procedures related to public procurement and public contracts.

CHAPTER II

ADMINISTRATIVE OFFENCES

Article Three

Administrative Offences

Any action or omission which is contrary to the rules established in the Legal Regime of Public Procurement, in the special legal regimes covering that matter, and in the Legal Regime of Public Contracts and in their additional standards shall constitute an administrative offence.

Article Four

Measures applicable to public officials and Public Administration agents

When a public official or Public Administration agent is detected as a possible offender under the Legal Regime of Public Procurement or under the Legal Regime of Public Contracts, the authority which is aware of this conduct shall inform the competent authorities in order to conduct enquiries or to initiate disciplinary proceedings with a view to determining liabilities, in accordance with the terms set out in the Statute of Public Officials.

Article Five

Measures concerning the tenderers or their representatives in public procurement procedures

1. Any offensive conduct carried out by the tenderer, his representative or other parties directly related to him, may result in the application of the following measures:
 - a) exclusion of the tenderer from the procedures;
 - b) declaration of temporary ineligibility drawn up for a period of up to 1 year;
 - c) declaration of permanent ineligibility.
2. In the case of number 1 above, the competent public official shall also declare that the acts resulting from the procedures prior to the awarding of the contract, having benefited the tenderer, shall be considered void.
3. The head of the public service may declare that the tenderer be permanently illegible to participate in public procurement operations and in public contracts, in his area of competence, in the case of a conviction with the force of *res judicata*, resulting from facts directly related to public procurement and public contracts having occurred in the Democratic Republic of Timor-Leste.

4. When the head of the public service excludes or declares any of the tenderers ineligible, the Public Procurement Service should be notified of this act.

Article Six

Measures upon the signing of the contract

1. When, after the contract has been signed, it has been proven that an offence under the Legal Regime of Public Procurement or under the Legal Regime of Public Contracts, which was decisive for the awarding of the contract, the authority which represents the public service shall request that the court or the competent body renders the contract void, without prejudice to its right to claim the corresponding compensation.
2. In the event of the number above, the public service may also declare loss of performance security, under the terms set out by law.

Article Seven

Conducts of a criminal nature

1. When an offensive conduct has been detected which is also of a criminal nature, it shall be up to the head of the public service, who initiated the public procurement procedure or who signed the contract, to request the intervention of the competent body.
2. The public service may declare the temporary ineligibility of the tenderer and suspend public procurement procedures or suspend the effects of the contract until judgement has been passed.
3. In the event there are grounds to suspect the involvement of a public official in offensive conduct as in number 1 above, such a fact shall be notified to the head of the public service department to which the official belongs.
4. The results of the proceedings to apply one of the measures set out in this legal diploma to the tenderer, the awardee or their representatives, as well as the results of the proceedings to demand disciplinary responsibility to public officials and Public Administration agents are independent of the results of the criminal proceedings.

CHAPTER III

APPEAL

Article 8

Contesting the measures applied to public officials and public agents

The public officials and public administration agents participating in the public procurement procedures or public contracts may contest the disciplinary measures applied to them under the terms set out in the Statute of Public Officials.

Article 9

Contesting the measures applied to the tenderers

1. In the event a tenderer does not agree with the measures applied, he may lodge a complaint through normal administrative channels.
2. Once the decision concerning the complaint has been reached, the dissatisfied tenderer or awardee may request that it be reviewed under the terms of this legal diploma.
3. Both the complaint and the appeal must be based on the concrete violation of at least one of the standards of the Legal Regime of Public Procurement or its special legal regimes in terms of public procurement or the Legal Regime of Public Contracts and additional standards.

Article 10

Information on the complaints and the appeals

1. The other participants in the public procurement procedures may also be informed about the complaints or appeals submitted and the final results thereof.
2. When there has been a violation resulting in serious losses for the tenderer and his argument has been accepted, the same decision should also set out the corrective measures to restore legality, including the declaration that the harmful acts have been made void, if they were carried out prior to the awarding of the contract.

Article 11

Suspensive effects

The public service may decide whether the lodging of the complaint or submission of the appeal shall suspend the subsequent operations involved in public procurement procedures or the performance of the contract.

CHAPTER IV

Processing complaint

Article 12

Lodging complaint

1. The dissatisfied tenderer or awardee may lodge a complaint before the authority which declared the ineligibility or the application of another measure under the terms of this legal diploma.
2. The complaint shall be lodged in writing, indicating the grounds of fact and law which justify it, as well as the proof and the concrete argument.

Article 13

Competent authorities receiving the complaint

The following authorities are considered as competent to receive and give an initial opinion on the complaints lodged to them:

- a) The heads of sovereign bodies, Ministries and the Secretaries of State, under the terms of their corresponding organic laws concerning decisions adopted by them;
- b) Those expressly appointed heads who are authorised to carry out public procurement operations;
- c) The heads of Autonomous Services, public entities and other bodies with administrative and financial autonomy which are under their responsibility;
- d) The heads of other legal persons with a share of State capital of over 50% (fifty percent) which, albeit not of a business nature, pursue eminently public ends, for which they are responsible.

Article 14

Processing complaint

1. The competent authority under the terms laid out in the article above shall receive the complaint lodged and shall decide on its admission within a maximum time limit of five days.
2. The only reason to declare non-admissibility of a complaint is when it has been lodged outside the established time limit.
3. The decision on the complaint lodged shall be included in a document which mentions the grounds that were taken into account and this decision shall be immediately notified to the tenderer.

CHAPTER V

Appeal

Article 15

Admissibility

1. The authority which is competent to decide shall declare or reject the admissibility of the appeal within a time limit of five working days, subsequent to the date of reception of the appeal.
2. The following points may be considered as reasons for non-admissibility of the appeal:
 - a) The submission of the request outside the established time limit;
 - b) The request is made with the sole purpose of repeating the complaint which was rejected as it did not contain sufficient proof vis-à-vis the grounds of fact and law invoked;
 - c) The request is made with the purpose of submitting evidence which was not submitted at the time of the complaint, unless it was impossible for the tenderer to have submitted them at that time.

Article 16

Competent authorities to settle appeals

The following shall be competent to receive and decide on appeals submitted by tenderers in terms of administrative offences under the Legal Regime of Public Procurement, special public procurement legal regimes or the Legal Regime of Public Contracts:

- a) The Prime Minister, against the decisions on complaints, immediately settled by the heads of sovereign bodies, and Ministers and Secretaries of State;
- b) The heads of sovereign bodies, Ministers and Secretaries of State as regards appeals submitted against the decisions on complaints, adopted by the heads of their bodies, by the heads of Autonomous Services or other institutions under their control.

Article 17

Request for appeal

1. The request shall be submitted in writing before the competent authorities that shall receive and decide upon it within five working days subsequent to the date of notification of the decision concerning the complaint.
2. The appeal shall include the grounds of fact and law, the legal provisions violated and the concrete argument of the tenderer, together with the evidence that is to be used.

Article 18

Decision concerning appeal

1. Once the documents have been received the competent authority has ten working days to examine and decide upon the concrete argument put forward by the tenderer and to settle everything that is pertinent thereto according to the law.
2. The decision on the appeal submitted shall mention the grounds of fact and law which were taken into account and the interested party shall be immediately informed of this decision.
3. There is no administrative appeal against the decision of ineligibility ratified after the appeal.
4. The legal action does not produce suspensive effects.

CHAPTER VI

SPECIAL AND TRANSITIONAL PROVISIONS

Article 19

Additional instructions

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

Article 20

Initiated proceedings

The proceedings already initiated at the time this decree-law comes into force shall continue till their conclusion in accordance with the rules previously in force.

Article 21

Repeal

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

Article 22

Entry into force

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

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

The Prime Minister

(Mari Bim Amude Alkatiri)

Minister of Planning and Finance

(Maria Madalena Brites Boavida)

Promulgated on 8th of November of 2005

To be published

The President of the Republic

(Kay Rala Xanana Gusmão)