

DECREE-LAW NO. 1/2010

OF 19 FEBRUARY

AMENDING THE JURIDICAL REGIME ON PROCUREMENT

The Juridical Regime on Procurement, approved by Decree-Law No. 10/2005 of 21 November, establishes an essential normative for the country consisting of rules to be observed by the State when acquiring goods and services.

The need arises therefore to implement some decentralisation measures relating to procurement procedures that promote the development of the Nation.

Local development shall be promoted through the award of civil construction works to local companies. This will promote development since these companies will undertake construction works based on scientific knowledge and principles of accountability. Local population has the possibility to participate in the process of inspecting the construction works since they are future users of such public works. National businessmen are thus encouraged to work better and to develop their companies in an atmosphere of healthy competition which in turn promotes the emergence of new local companies.

This decentralisation process is yet another measure that contributes to the future decentralisation of the central Government and the beginning of the confidence of the population in the efficacy of local administration and the municipalities.

Thus,

Pursuant to subparagraph e) of article 115.1 and subparagraphs a) and d) of article 116 of the Constitution, the Government enacts the following to have the force of law:

Article 1
Amendment to Decree-Law No. 10/2005 of 21 November

Articles 2, 15, 21 and 92 of Decree-Law No. 10/2005 of 21 November, which approves the Juridical Regime on Procurement, shall now read as follows:

“Article 2
Scope of application

1. The scope of application of this decree-law shall apply to public services procurement procedures undertaken at the expense of the State Budget or as expenses to be charged against other financial resources in the possession of, or controlled by, such public services.
2. Any activity relating to acquisition of goods and services, including execution of works for public purposes, shall be subject to this general juridical regime.
3. Without prejudice to the application of the general principles of this decree-law, the following procurement procedures shall observe the rules of their specific juridical regimes:
 - a) Procurement procedures relating to equipment and items that are essentially of a military, police, and national intelligence service nature;
 - b) Procurement procedures declared to be of a secret nature or that are subject to official secrecy;
 - c) Procurement procedures subject to special security measures pursuant to legislation in force in the Democratic Republic of Timor-Leste or to international norms;
 - d) Procurement procedures falling under the competences of the Drugs and Health Equipment Service (Serviço Autónomo de Medicamentos de Saúde, EP);
 - e) Any other procurement procedures the Government decides to regulate in separate.

4. When committing expenditures for acquisition of goods, execution of works and provision of services pursuant to this decree-law as well as expenditures subject to a specific regime, the regime regulating the component with the highest financial amount shall apply.

5. Diplomatic and consular missions and permanent missions of the Democratic Republic of Timor-Leste abroad shall observe the principles contained in this juridical regime, with the necessary adaptations, to be established in a joint statute of the Ministry of Finance and the Ministry for Foreign Affairs.

6. Government expenses with civil construction works and public works involving an amount not exceeding \$250,000,00 (two hundred fifty thousand American dollars) shall be made through special procedures for the award of public works to local companies headquartered in sub-districts.

7. The matter referred to in the preceding paragraph shall be regulated by a Government statute.

Article 15

Entities with competence to authorize procurement procedures

1. The following entities shall have the competence to approve procurement procedures before the contract is signed by the relevant Minister:

- a) The Council of Minister for contracts involving an amount exceeding \$3,000,000 (three million American dollars);
- b) The Prime Minister, with the possibility to delegate the competence to sign to any person indicated by him or her, for contracts involving an amount between \$ 1,000,000 (one million American dollars) and \$ 3,000,000 (three million American dollars);

2. The following entities shall have the competence to sign and approve contracts involving an amount not exceeding \$1,000,000 (one million American dollars);

- a) Holders of organs of sovereignty, with competence to delegate;

- b) Ministers and Secretaries of State, pursuant to their respective organic laws, with competence to delegate;
 - c) All other public bodies and services subject to Government Budget discipline or mostly funded by it;
3. (Revoked)

Article 21

Delegation of competences

1. Delegation of competences on matters of procurement shall only be allowed where it is expressly authorised by this Decree-Law.
2. The entities referred to in subparagraph b) of paragraph 1 and subparagraphs a) and b) of paragraph 2 of article 15 may delegate competence, in writing, to undertake procurement procedures.
3. Any person receiving delegation of competences cannot sub-delegate such competences to others.
4. The entity that delegates competences shall not be exonerated from the responsibility to accomplish the law in each of the procurement procedures undertaken by the subordinate organs or entities to which it delegated competences.

Article 92

Procedural steps for procurement by direct award

1. Public Service may choose procurement by direct award in the following cases:
 - a) In cases of emergency following an unforeseen event that jeopardizes public health and security;
 - b) Where no bids exist, or where those existing do not comply with the criteria provided for in the tender, or where the candidates do not comply with the requirements for participating in the tender;

- c) Where no competition exists for technical reasons;
- d) Where the goods or services may only be supplied by a specific entity and no reasonable or substitutive alternatives exist in the market;
- e) In case of additional supply of goods and services, or of goods the purpose of which is to replace parts, to extend, or to proceed with services or goods for existing equipment, software, services of facilities in which the substitution of the supplier would result in the acquisition of goods and services that do not comply with the requirements of adaptability or compatibility;
- f) Where the intention is to obtain a prototype for original service or good or for purposes of limited experimentation, or that is created for a specific contract for research, experiment, study or original creation;
- g) Where the intention is to protect patents, copyrights or other exclusive or intellectual property rights;
- h) Where the intention is to acquire commodities or to make purchases under advantageous conditions, including unsolicited innovative proposals;
- i) As a result of a drawing competition;
- j) For reasons of impracticability or inconvenience duly justified and documented.

2. All operations undertaken, including the circumstances justifying the use of direct award, shall be mandatorily documented.

Article 2

Revocation of Decree-Law No. 10/2005 of 21 November

Articles 19 and 20, as well as Annex II of Decree-Law No. 10/2005 of 21 November, are hereby revoked.

Article 3

Addition of a new article to Decree-Law No. 10/2005 of 21 November

A new article 23-A is added to Decree-Law No. 10/2005 of 21 November, which reads as follows:

“Article 23-A

Follow-up Commission and Procurement Technical Secretariat

1. A Procurement Follow-up Commission is hereby established under the Prime Minister or of any person delegated by the Prime Minister and appointed by his or her instruction, with the following competences:

- a) To follow up the implementation of procurement processes;
- b) To follow up the execution of projects;
- c) To assess results.

2. A Procurement Technical Secretariat is hereby established under the guidance of the Prime Minister or of any person delegated by the Prime Minister and appointed by instruction of him or her, with competences for undertaking procurement processes for projects involving amounts exceeding \$1,000,000 (one million American dollars).

Article 4

Entry into force

This decree-law enters into force on the day immediately after the date of its publication.

Approved by the Council of Ministers on 20 January 2010.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Finance,

Emília Pires

Enacted on 12 February 2010

For publication

The President of the Republic,

José Ramos-Horta