

GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF EAST TIMOR**DECREE-LAW No 10/2005****Of 21 November****PUBLIC PROCUREMENT REGIME (PPR)**

Procurement expenditure to be made by the Government of the Democratic Republic of East Timor (DRET) in order to ensure that the needs of public administration and other public entities and services will be fulfilled requires a specific legal regime to be set, so that financial resources can be properly managed.

The experience already gained in such operations like purchase of goods and services and execution of works with public purposes advises that clear and simple rules should be adopted in order to make easier the organization of the procurement procedure, defining a legal basis of administrative and procedural scope that enables the consistent development of these activities, following the current international regulation on this subject.

In order to achieve transparency, savings and efficiency, it is important to establish the legal regulations suitable for the country's development needs, allowing bringing together good practices in procurement procedures and an adequate control over those very activities.

On the other hand, it is indispensable that the legal regime concerning procurement results in an incentive for the production of goods and the rendering of services or the execution of works, which at the same time can ensure competition and promote companies involvement, both national and international ones.

Thus,

In terms of article 115, no 1, paragraph e) and article 116, paragraphs a) and d) of the Constitution of the Republic, the Government decrees, to be applicable as a law, the following:

**TITLE 1
GENERAL PRINCIPLES AND RULES****CHAPTER 1
GENERAL PROVISIONS****Section 1
Generalities****Article 1
Objectives**

The Public Procurement Regime (PPR) aims to establish the general rules of how expenditure shall be made in view of the purchase of goods and services and the execution of works, intended to fulfill the needs of the entities belonging to the direct and indirect State administration.

Article 2

Scope of application

1. The scope of application of the present statute encompasses the procedures related to public services procurement made at State budget expense or on account of other financial resources owned or controlled by them.

2. Every activity concerning the purchase of goods and services or the execution of works with public purposes is subject to this general legal regime of procurement as a basic rule.

3. Without detriment to the application of the general principles established in the present decree-law, the below mentioned procurement procedures shall follow the rules regarding their special legal regimes:

- a) The ones relating to national defense or national security;
- b) The ones that have been declared as secret or under official secrecy;
- c) The ones that are subject to safety measures in terms of the existing legislation, whether internally or internationally;
- d) The ones with regard to competences of “Serviço Autónomo de Medicamentos e Equipamentos de Saúde, EP” (Autonomous Service of Drugs and Health Equipments);
- e) Any other ones that the Government will decide to regulate separately.

4. The legal regime applicable to such expenses that at the same time include the purchase of goods, the execution of works and the rendering of services under this statute and also a kind of expense subject to any of the special regimes shall be the one foreseen for the portion of the whole expense which has the highest financial value.

5. Diplomatic representations, consular services and permanent missions of the Democratic Republic of East Timor shall apply the principles contained in the present legal regime, with the pertinent adaptations, which shall be laid down by a joint regulation from the Ministry of Plan and Finance and the Ministry of Foreign Affairs and Cooperation.

Article 3

Definitions

1. For the purposes of the present decree-law and its complementary regulations, the terms used have the following meanings:

a) Notice: it is the act of publication through press or mass media, by means of which the public service calls all those potentially interested in supplying goods, executing works or rendering services to take part in the procedure to be started;

b) Procurement: it is the purchase of goods, the execution of works and the rendering of services which have a public purpose;

c) Procurement of goods or supply: it is the purchase, the civil lease, including the real estate one, and the financial lease, with or without option to purchase, which may include, as an additional part of the contract, the corresponding works of assembly and maintenance;

d) Competitors: it is the generic name for all those interested in supplying the goods, executing the works or rendering the services which make the object of the procurement procedure, from the moment they express their interest in taking part in the procedure;

e) “Central de Fornecimentos do Património” – CFP (Central Service for Goods Purchasing): it is the centralized service in charge for purchasing goods for the common use of the remaining public services, keeping them and making them available in accordance with the needs of these ones;

f) Invitation to tender: it is the communication directly issued by a public service to certain pre-qualified suppliers or participants in a procedure limited by pre-qualification, in a restricted procedure or in a negotiated procedure soliciting them to tender for the provision of works, goods and or services.

g) Supplier or seller: an individual or an organization, as a potential contracting party, in a procedure of goods purchase, works execution or services rendering, aimed to satisfy public needs;

h) Works: an action or set of actions intended to execute works on immovables consisting in repairing, maintaining or building facilities so that activities with public purposes can be developed therein, and which may also include any other professional activity in the civil engineering field and others of similar nature, as well as the engineering project and the supply of some material resources required by their features;

i) Services rendering: an action or set of actions by means of which an individual or a company provides a service to a public service or to a third party at the former's expense, and which may include the supply of some accessory or material resources required by the features of the service to be provided or the execution of works directly related to the service;

j) Public Service, awarding entity or procurement entity: all of the services and entities referred to in the previous article that have the faculty to directly take part in the procurement management, as well as the competence to start a procedure for purchasing goods, executing works or rendering services for their own benefit or of a third party;

k) Type of procurement procedure: each one of the modalities to be used as a method to contract goods, works or services.

2. In Appendix 1 to this decree, definitions of other terms also used in the present compilation's text can be found, in order to make easier the understanding of the present statute and which have an enunciative and not restrictive nature.

Section 2 On the principles

Article 4 The principles of legality and equality

1. In designing and executing the procurement procedures, the Public Service shall comply with the regulations prescribed in the present statute, without detriment to the exceptions foreseen in law.
2. The conditions to get access and participate are the same for all of those interested and such criteria shall be duly expressed throughout the procurement procedure steps, any discrimination among the competitors being forbidden.
3. In every procedure it shall be ensured that the highest possible number of interested parties is consulted or, at least, the minimum number imposed by law.

Article 5 The principles of public interest, impartiality and confidentiality

1. In preparing all the procedure and as long as this one lasts, the Public Service shall look for the maximum satisfaction of the collective needs with which the law entrusts and charges it.
2. As to the procurement procedures, all interests shall be taken into account, and as for the competition documents and other relevant ones, they cannot contain any clause susceptible to benefit or affect any one of the parties.
3. The Public Service, its employees and agents shall preserve the confidentiality of the documents and information data submitted by the competitors.

Article 6 The principles of good faith and proportionality

1. In executing the procurement procedures, public and private entities shall communicate among them according to an attitude of authenticity and veracity.
2. The procedure to be adopted shall be chosen in accordance with its adequacy to the purposes to be achieved, as well as with the costs and benefits thereof.

Article 7 The principles of transparency and publicity

1. The award criteria shall be well defined prior to the procedure and information to those interested shall be ensured from the opening date.

2. Bids selection shall always be justified in writing.
3. The Public Service shall ensure the publicity of its contracting intention, except in regard to the exceptional regimes foreseen in this statute and other applicable regulations.
4. The present decree and its complementary rules, the administrative decisions and directives of general application relating to procurement procedure as well as all of their modifications shall be immediately made available to the public and systematically updated.

Article 8 **The principles of stability and certainty**

1. The relevant documents upon which the procedure is based shall be kept unchanged during the overall procedural steps until their end.
2. As for the procedures where no negotiation is foreseen, the bids presented by the competitors shall remain unchangeable until the contract award decision.
3. After the award decision, the parties may introduce by common consent any adjustments of an accessory or a functional nature, provided the public interest principle is undoubtedly taken into account.
4. After receiving the bids, the Public Service may only unilaterally discard any of them in the cases foreseen in the present compilation.

Article 9 **The accountability principle**

The parties to the procedure, entities, employees, people on contract and economic agents may be civilly, financially and disciplinarily held responsible, in terms of law, for actions infringing the provisions of this statute, without detriment to the criminal sanctions to which they are liable.

Article 10 **The principle of expense singularity**

1. The procurement sum to be taken into consideration shall correspond to the total amount of goods purchase, works execution or services rendering.
2. It shall be forbidden the expense fragmentation with the intention of freeing it from the application of the prescribed regime, including such action consisting in dividing up the actual total acquisition cost into different shares, so that none of them can reach the imposed limits.
3. The expenses increase arising from the modification to, the price review of and the amendment to the original contracts, provided it is duly justified and the Minister of Plan and Finance has given his consent thereto, may be exceptionally authorized, depending on the funds that the State budget can make available thereto, up to 10

percent of the original contract planned cost and within the limit of US\$ 40.000 (forty thousand American dollars), under the circumstances foreseen in the present statute.

4. Once the percentage or the limit referred to in the previous number is exceeded, the competence for approving the expense in question shall switch to the authority competent to authorize the contract according to the actual total acquisition cost of the procurement operation.

Article 11

The principle of compliance with the general rules

1. Every action concerning procurement shall obey the legal rules applicable in the Democratic Republic of East Timor, be them of a general nature or those of this PPR or other ones of a specific kind or their complementary regulations.

2. The present decree shall apply as a basic rule and in order to bridge eventual gaps across the laws mentioned in article 2, no 3.

Article 12

The principle of compatibility with international rules

The present statute shall not apply when it comes into contradiction with an international legal obligation undertaken by the Democratic Republic of East Timor, by virtue of:

- a) A treaty or another form of international agreement into which the DRET has entered together with one or more countries;
- b) An agreement between the DRET and an international funding institution.

Article 13

Law retroaction and construction

1. The present rules shall not apply retrospectively, without detriment to the lawful expectations of those interested and provided this does not affect the State interests.

2. Substantive construction and the eventual bridging of gaps regarding the rules contained in the present decree shall be made by Resolution of the Council of Ministers.

3. The provision of the previous number shall not apply in case of mere procedural construction insusceptible of affecting the parties' interests and the principles stated in this Section.

Article 14

Counting of deadlines

1. As a general principle, deadlines shall give enough time for those interested in entering a competition to be able to prepare and submit documentation and other required information, taking into account the reasonable needs of the Public Service.

2. Deadlines for presenting bids shall be counted without breaks.
3. Deadlines suspension or extension shall take place accordingly to the rules prescribed in the present compilation.
4. In case the final day for submitting a bid coincides with a holiday, it shall switch to the next working day.

CHAPTER 2 ON THE PROCUREMENT PROCEDURE COMPETENCES

Section 1 Entities' competences

Article 15 Entities competent for authorizing procurement procedures

1. The following entities are competent for authorizing a procurement procedure to be launched:
 - a) The Prime Minister, for contracts with a value of at least US\$ 1.000.000 (one million American dollars);
 - b) The Minister of Plan and Finance;
 - c) The leaders of the State organs of power, ministers and secretaries of State, in terms of the respective organic laws;
 - d) The leading people specially appointed and authorized by the leaders of the respective State organs of power and by ministers and secretaries of State;
 - e) The heads of autonomous services, the public entities and other bodies with administrative and financial autonomy;
 - f) The other legal entities with a State share higher than 50 (fifty) percent, which, although having no corporate nature, mainly pursue public purposes;
 - g) All of the remaining public organs and services under the State budget control or being above all financed by it.
2. The amounts up to which the aforementioned entities shall be competent to launch, approve and ratify procurement operations are set in Appendix 2 of this statute.

Article 16 Competences of the Minister of Plan and Finance

As for the procurement procedure, the Minister of Plan and Finance holds the following powers:

- a) To execute the Government's procurement policy and to submit to it proposals in connection therewith;
- b) To submit to the Government procedures proposals able to ensure compliance with the general principles and with those tending to the strict fulfillment of State needs;
- c) To submit to the Government reports on the procurement policies execution and to propose the corrective measures necessary to be adopted;
- d) To give rise to the ministerial regulations, instructions and administrative acts necessary for implementing the present decree;
- e) To analyze and to decide on the operations which are assigned to him by the present statute and by other provisions coming from the Government;
- f) To request for looking up and to call any procurement procedures, irrespective of the stage at which they find themselves, in order to ensure their accordance with the policies defined by the Government;
- g) Other competences assigned to him by the Government or by law.

Article 17 **Competences of the Procurement Service**

1. The Procurement Service of the Ministry of Plan and Finance, hereinafter briefly called as the Procurement Service, is the department in charge of directing the procurement procedure regulated in this statute and it shall hold the following competences:

- a) To give advice to the Minister of Plan and Finance on the global policy relating to procurement;
- b) To take part in those activities in regard to the execution of Government's policy concerning procurement;
- c) To organize, to direct, to control and to manage procurement operations in accordance with the prescriptions of the present law and other complementary rules;
- d) To advise the Minister of Plan and Finance on the methodological parameters, the procurement instructions and the procedures handbooks which can be useful to help implement the present decree-law;
- e) To oversee the execution of the policy regarding procurement planning, competition procedures, logistics and supply administration in general;
- f) To carry out the revision, purchase and management operations which the present statute has assigned to it;
- g) To keep for 5 (five) years the documentation related to procurement operations;

h) To promote periodic appointments and meetings together with other public administration services and other services allowed undertaking a decentralized procurement, in order to improve the compliance with the existing policies and regulations as to procurement;

i) To ensure a specialized training for the personnel working in the procurement field;

j) Other competences assigned to it by this statute and by the applicable regulations.

2. The Procurement Service is also competent to perform the following functions:

a) To carry out the procurement management whenever the present statute charges it with such competence or as long as the Minister of Plan and Finance has previously delegated that power to it in an express and written form;

b) To propose the application of administrative sanctions over all infringements of the rules related to the present legal regime, in accordance with the procedures set by law.

Article 18 **On the Procurement Service obligations**

1. The Procurement Service shall undertake the procurement operations requested on behalf of the public services referred to in article 15, in the following cases:

a) When the procurement exceeds the approved limits within which the respective operations can be made in a decentralized way by them;

b) When such has been expressly requested to it by the heads of those services;

c) In case the question is the procurement of State organs territorially decentralized without administrative and financial competences to lead their own procurement;

d) Any other institutions procurement whose expenses are made thanks to the State budget or to other funds owned by them, except for those which benefit from a status of administrative and financial autonomy acknowledged by law.

2. For the purposes of the present decree and other complementary rules, the Procurement Service also has the following obligations:

a) To give methodological supervision to the entities which undertake procurement operations;

b) To assist the Public Services on the state of execution of the financial resources received for their centralized procurement operations;

c) To draw up and to keep updated records and accounts which can faithfully show the undertaken economic facts;

- d) To draw up financial information and reports which can faithfully show the operations, resources and expenses related to the procurement activity and to submit them to top levels on the set dates;
- e) To ensure an adequate price-quality relationship as for the goods, works and services which make the object of procurement.

Article 19 **On the procurement decentralization**

1. Public entities mentioned in article 15 shall be competent to undertake procurement operations in a decentralized way, in accordance with the State budget portion accorded to each one of them and within the amount limit authorized by law.
2. Entities referred to in the previous number may request procurement operations concerning works, goods or services referred to in article 2, no 3 which do not exceed the aforementioned total amount limit to be undertaken, in a centralized way, by the Procurement Service or by the competent organ.
3. Procurement procedures whose amount exceeds the limit within which an entity is competent to act therefor shall be started, selected, approved and ratified by the entities competent in terms of law.

Article 20 **On obligations as regards decentralization**

1. Public Services authorized to undertake a decentralized procurement shall commit themselves to comply with the rules laid down for these operations and have the following obligations:
 - a) To submit to the Procurement Service on the set dates monthly summaries of their procurement activities;
 - b) To submit to the Procurement Service the Annual Assessment Report on the undertaken procurement operations.
2. The leading personnel of the entities authorized to operate in a decentralized way and according to simplified procedures shall be in charge of supervising and controlling the development of these operations, without detriment to the faculty of delegating their powers to their deputies in terms of law.
3. If needed be, the heads of these entities may constitute a Procurement and Contracts Committee to assist them at this level of decision-making.
4. The entities authorized to incur expenses in a decentralized way, according to the simplified procedures, are also liable to obey the provisions of article 18, no 2, paragraphs c), d) and e).

Article 21 **Delegation of powers**

1. Delegation of powers in the procurement field shall only be allowed as long as it has expressly been authorized by law.
2. The heads of the entities mentioned in article 15, no 1, paragraphs c), d), e), f) and g) that have certain services or bodies under their hierarchy may delegate in writing the power to carry out procurement procedures.
3. Leading people who have been delegated any power cannot subdelegate it to any one else.
4. The delegating entity shall not be exempt from responsibility for the observance of the law as to each one of the procurement procedures which have been undertaken by the organs or entities under its hierarchy to which it has delegated its power.

Article 22

On the expenses authorization for real estate lease

1. The same entities which are competent to start and approve procurement operations shall also be competent to authorize expenses for real estate lease with public purposes.
2. The amount to be taken into consideration in order to determine the organ competent to make the choice in question as well as to approve, ratify and sign the contract shall correspond to the annual rent arising from the lease.
3. Expenses in relation to the lease of immovables located abroad also require the authorization of both the Minister of Plan and Finance and the Minister of Foreign Affairs and Cooperation.

Article 23

On the Contracts Committee

1. Procurement operations shall also be assessed and approved by a Contracts Committee set up in terms of law, in case the procurement amount or nature justifies so.
2. Without detriment to what is prescribed in the present statute, the Committee's competences are defined in the law concerning public contracting.

Section 2

On the procurement records

Article 24

On the folder

1. With the purpose of controlling the basic information regarding their activities, entities authorized to undertake procurement operations, such as the Procurement Service of the Ministry of Plan and Finance which does it in a centralized way, shall draw up and keep a folder containing at least the following files:
 - a) The annual procurement plan;

- b) The data relative to procurement notices and invitations to tender;
 - c) The results of procedures, including the names of companies to which and individuals to whom contracts have been awarded as well as their amounts;
 - d) The information concerning measures applied to the competitors;
 - e) All the remaining information susceptible of being required in terms of the rules of law.
2. The rules relating to the record of operations and of sellers and suppliers as well may be regulated by ministerial dispatch from the Minister of Plan and Finance.

Article 25 **On the sellers record**

1. With the purpose of controlling information regarding sellers, a sellers record is hereby set up, it shall be kept with the required confidentiality by the Procurement Service and shall contain the following items:
- a) A sellers list, subdivided into areas of specialization;
 - b) The data relative to sellers of goods and services that have taken part in procurement operations, according to what is prescribed in the respective specific rules;
 - c) The information concerning measures applied to each one of the sellers.
2. Entities which have decentralized competences for procurement purposes may ask the Procurement Service of the Ministry of Plan and Finance for information concerning sellers during the pre-qualifications assessment phase or the qualifications assessment one in view of ensuring the accuracy of the data made known by them.
3. Under the interested ones' request, Procurement Service may issue certificates of registration in the sellers record.

CHAPTER 3 **ON THE COMPETITORS**

Section 1 **General rules on competition**

Article 26 **On the declared qualifications**

1. Individuals and legal entities that compete for a procurement operation shall prove their qualifications, namely the fulfillment of the requirements prescribed by law and the specific ones which have been set for the operation in progress.

2. The criteria for assessing qualifications shall only be based on the essential and specific requirements referred to in law and in the documents related to pre-qualification and/or competition.

Article 27
On the essential requirements

1. In order to take part in procurement procedures, competitors shall be able to prove that they fulfill the following essential requirements:

a) To have the business ability, the reliability, the experience and the reputation enough to ensure compliance with the contract;

b) To have the legal capacity to enter into a contract;

c) To have observed all the legal requirements demanded in the Democratic Republic of East Timor to intervene in a procurement operation;

d) To dispose of enough financial resources for the execution of the contract;

e) To have at their disposal a staff wearing such professional and technical qualifications and skills able to ensure the contract fulfillment;

f) To have fulfilled their obligations relating to the payment of taxes and social security contributions, in case of awarded bidders based in East Timor;

g) Not to be susceptible to any one of the disqualifying causes foreseen under the present compilation.

2. Without detriment to the competitors' right to keep their intellectual property and their trade secrets safe, the Public Service may demand the suitable documentation or other information which can be deemed to be useful to prove their qualifications.

Article 28
On the specific requirements

1. The Public Service may lay down any other specific requirements in terms of qualifications to be met by the competitors, which shall be pointed out in the pre-qualification documents or in the competition ones or in such documents soliciting quotations.

2. The Public Service may not in any case lay down any discriminatory requirements against any one of the competitors or against any categories or groups thereof on a citizenship basis or based on other issues that are not objectively justifiable.

Article 29
On disqualifying causes and on impediments

1. Competitors that incur one of the following situations shall be disqualified and excluded from the procurement procedure:

- a) Those being insolvent or having gone bankrupt;
 - b) Those undergoing a situation or a proceeding of end of activity, guardianship, bankruptcy or having been placed under court liquidation;
 - c) Those whose businesses are being run by a court or by a judicial agent;
 - d) Those whose business activities have been suspended by a court decision;
 - e) Those having tax debts, debts arising from the non-payment of social security contributions or a debt of any nature towards the State;
 - f) Those whose executives or directors have been convicted by a definitive court decision in the preceding five years for criminal offenses in relation to their professional behavior or springing from the making of false statements or the giving of wrong information on their qualifications, in view of entering into a contract with any public institution in the Democratic Republic of East Timor;
 - g) Those having been disqualified in any other way as a result of administrative suspensions or of licensing procedures;
 - h) Those incurring any incompatibility in terms of the present statute, the same applying to their representatives;
 - i) Those submitting more than one tender at the same competition.
2. Competitors shall be informed of the previous disqualifying causes and impediments through the pre-qualification documents or the competition ones.
3. The Public Service shall disqualify any competitor in case it has at any time checked that information given as far as qualifications are concerned is false or contains essential errors or omissions.

Article 30
On the proof of requirements fulfillment

- 1. The Public Service may demand to the competitors to provide the suitable documentation or other information which can be deemed to be useful to prove their qualifications.
- 2. The demand may aim the notarial certification or the official confirmation of any document concerning the suppliers' qualification for the procurement procedures.

CHAPTER 4
ON INCOMPATIBILITIES

Section 1
On the incompatibilities relative to the competitors

Article 31
Incompatibilities of the public employees and of the agents of Public Administration

Given the exclusive regime legally applicable to the public employees and to the agents of Public Administration, it shall be deemed as incompatible with their legal status any act that they intend to perform as representatives of any of the competitors to the procurement procedure, except for the case they take part as official representatives of the public entity they serve.

Article 32
On the conflict of interests

1. As for their participation in procurement operations, public employees and agents of Public Administration shall observe the rules on conflict of interests laid down in the Public Administration Personnel Statute.

2. The Public Services, in intervening in procurement procedures, cannot be represented or in any way assisted by the following persons:

a) Blood relatives up to the second-degree, husband or wife and those who keep a business relationship with one of the competitors;

b) Those who have been partners or associates of any one of the competitors in the last three years before the competition opening date.

3. The Public Service cannot award the contract to blood relatives up to the second-degree or partners and associates of consultants that have taken part in the procedure on any basis.

Article 33
On the competitors incompatibilities

Without detriment to the competitor's entitlement to request in writing to the Public Service the necessary explanations and appointments, it shall be incompatible with his or its legal status to perform any action, directly or through a third party, with the purpose of influencing the organs in charge of assessing pre-qualifications or qualifications or of awarding a contract.

Section 2
General rules on incompatibilities

Article 34
The relationship between competitors and the Public Service

1. Except for the cases foreseen in law, no negotiation shall occur between the Public Service and any competitor concerning a given bid before the contract has been awarded.

2. Explanations relative to designs, conception instructions, technical specifications or technical features of quality may only be requested at the preliminary conference or in writing, in no case explanations concerning prices and payment conditions being allowed.

Article 35
On the incompatibilities effects

1. Nullity declaration of the acts regarding the procurement in progress shall be demanded to the proper authorities, at any moment or any stage of the procedure, whenever the authorities in charge of procurement control have noticed a situation of incompatibility or conflict of interests.

2. In such cases involving public employees and agents of Public Administration, the authority having noticed the situation of incompatibility shall demand to the competent authority to start the suitable inquiry or disciplinary proceeding, according to what is prescribed in the applicable law.

TITLE 2
ON THE PROCUREMENT PROCEDURES

CHAPTER 1
ON THE TYPES OF PROCEDURES

Section 1
Types of procedures

Article 36
On the pre-qualification procedure

The pre-qualification procedure is the one that the Public Service may use before resorting to a procurement procedure, in order to identify and select, by means of a preliminary analysis, which ones of the competitors meet the requirements previously set in the pre-qualification documents.

Article 37
The admitted procurement procedures

Under the terms and conditions provided by this law, procurement procedures may correspond to one of the following types:

- a) An open procedure, which is necessarily required for procedures of an amount higher than US\$ 50.000 (fifty thousand American dollars), any of those interested being able to tender, provided they meet the requirements set in the competition documents;
- b) A procedure limited by pre-qualification, to which it shall only be admitted the bids coming from those that have been previously selected;
- c) A restricted procedure, wherein only those having been invited may tender;

- d) A negotiated procedure or a two-stage bidding procedure;
- e) A procedure soliciting tenders on quotations;
- f) A procedure by direct agreement;
- g) A simplified procurement procedure.

Section 2 **On the procedures**

Article 38 **On the national open procedure**

1. The national open procedure is the one that the Public Service shall use in order to raise the participation, as preferential competitors, of East Timorese individuals and companies set up in East Timor whose capital is held by Timorese citizens at a total share of at least 51 (fifty-one) percent.
2. The procedure shall compulsorily be of a national nature in case procurement concerns goods, works or services of an amount up to US\$ 100.000 (a hundred thousand American dollars).
3. As for the national open procedure and all the subsequent steps, it shall be used the currency with legal tender in the Democratic Republic of East Timor as well as all the official languages thereof.

Article 39 **On the international open procedure**

1. The international open procedure is the one that shall be used as a way to encourage participation of competitors of all over the world.
2. The international open procedure shall be compulsory in the following cases:
 - a) Building works contracts of an estimated amount higher than US\$ 1.000.000 (one million American dollars);
 - b) Contracts for the purchase of goods or concerning technical services of an estimated amount higher than US\$ 250.000 (two hundreds and fifty thousand American dollars);
 - c) Contracts for consultancy services of an estimated amount higher than US\$ 200.000 (two hundred thousand American dollars);
 - d) Once the advertised deadline for a pre-qualification procedure has been reached without at least three competitors having gotten the pre-qualification.
3. Once the advertised deadline for a national open procedure has been reached without any one having tendered or having gotten the pre-qualification or the qualification, the Public Service may, after having fulfilled the existing formalities, start an international

open procedure, without detriment to what is prescribed with regard to the choice of other procedures.

4. Individuals and companies referred to in the previous article may take part in the international tender procedure on equal terms and having to meet the requirements laid down for this procedure.

5. As to this open procedure, it shall be used the currency with legal tender in the Democratic Republic of East Timor.

6. As far as the international procedure is concerned, it shall be used the English language, without detriment to the translations that ought to be done into Portuguese or Tetum.

Article 40

On the procedure limited by pre-qualification

1. The procedure limited by pre-qualification may be launched whenever the technical complexity or the high amount of money involved recommends a previous assessment of the competitors' financial, commercial and technical capacities.

2. As for this procedure, the invitation to tender is addressed to the competitors that have already been admitted at the pre-qualification stage.

Article 41

On the restricted procedure

1. The restricted procedure is intended for all the registered suppliers that hold certain qualifications and features already known by the Public Service which launches the procedure.

2. The restricted procedure is intended for all the registered suppliers belonging to a certain geographic area or operating a specific business activity or meeting the specific requirements demanded for the type of procurement at issue.

3. Restricted procedure may be used in case the time and the cost necessary to analyze and assess a large number of bids are significant comparing to the low value of works, goods or services to be provided.

4. From the invitation point and during its procedural steps, restricted procedure shall follow the same rules applying to the procedure limited by pre-qualification.

Article 42

On the negotiated procedure

1. The negotiated procedure is a two-stage tender procedure and shall exceptionally be used for the provision of goods, complex works and services with special features in the following situations:

a) In case it will not be possible for the Public Service to accurately determine in advance the technical and contractual specifications applying to goods, works or services or the contingencies inherent to them, due to the high level of specialization required therefor;

b) In case the Public Service will need to ponder more than one bid or technical option, so that it can decide which of them better meets its needs.

2. This procedure takes place in two stages:

a) In the first one, the Public Service solicits the competitors, through a public notice or through an invitation addressed to at least three candidates, to submit their plans, designs and technical studies but no quotations, so that the Public Service itself can draw up the specific procurement requirements.

b) In the second stage, the Public Service makes an invitation for the definitive technical bids, herein included quotations, and the same rules of the restricted procedure will subsequently apply.

Article 43

On the procedure soliciting tenders on quotations

1. The procurement procedure soliciting tenders on quotations is intended for at least three suppliers already known by the Public Service and may be used for the acquisition of goods, works or services of less complexity, which do not require any technical specifications to be determined in advance, whenever the contract amount is lower than US\$ 50.000 (fifty thousand American dollars).

2. As for this procedure, the choice of the supplier that will be awarded a contract shall belong to the Public Service itself, without dependence to the legal steps inherent to a formal procedure.

Article 44

On the procedure by direct agreement

1. The procurement procedure by direct agreement is an exceptional procedure, by means of which the Public Service may address one or more given suppliers to meet the specific procurement needs, under the special circumstances foreseen in articles 92 to 94.

2. As for this procedure, the choice of the supplier that will be awarded a contract shall belong to the Public Service itself, without any bids having to be tendered.

Article 45

On the simplified procedure

1. Common expenses, namely those concerning the purchase of consumables, water supply, power supply, telecommunications and, in general, every periodic expenses previously registered as State Budget items which do not imply a procedure launching or the awarding of a new contract or amendments to existing contracts, shall be deemed

as following simplified procurement procedures in terms of the present statute, without detriment to their adequacy and dependence to the set Government policy.

2. For the purposes of the previous number, the scope of the simplified procedure may be modified by ministerial dispatch from the Minister of Plan and Finance.

Section 3 **On the procedures choice**

Article 46 **Competence for the choice of a type of procedure**

The previous choice of a type of procedure shall be fundamented and belongs to the entity competent to launch the procedure, except when the authorization from a higher authority is compulsory, in terms of the present decree.

Article 47 **On the choice criteria**

1. The procedure choice shall depend upon the amount of money in question and the rules laid down in this law.
2. The chosen procedure shall be the most adequate to satisfy procurement needs, in terms of this compilation.
3. As far as possible, preference shall be given to the open procedure.

CHAPTER 2 **STEPS CONCERNING PRE-QUALIFICATION PROCEDURES**

Section 1 **On the pre-qualification steps**

Article 48 **On the launch step**

1. The pre-qualification procedure gets started with the publication of the pre-qualification notice, inviting all those eventually interested in taking part therein.
2. Unless otherwise stipulated by law, the authority competent to launch the open procedure is also competent to decide whether the pre-qualification procedure will take place or not.
3. The common rules of competitions proceduring, including the ones regarding participation of the organs in charge of the envelopes opening and the competitors assessment, shall apply to the pre-qualification procedure, with the pertinent adaptations.

Article 49 **On the compulsory pre-qualification**

The pre-qualification procedure shall compulsorily take place in the following cases:

- a) Procurement operations relating to equipments specifically designed, industry facilities, specialized services, contracts with immediate delivery, design and building contracts or management contracts.
- b) Works of an amount higher than US\$ 250.000 (two hundreds and fifty thousand American dollars);
- c) Other cases provided by law.

Article 50 **On the requirements for pre-qualification notices**

1. Every pre-qualification notice shall include the minimum information detailed in Appendix 3 to this law.
2. Pre-qualification notices shall neither solicit nor accept from the competitors any information concerning to:
 - a) Price bids;
 - b) Design specifications;
 - c) Descriptive models of technical features;
 - d) Quality standards;
 - e) Methods for quality analysis;
 - f) Packaging;
 - g) Brands or other signs and symbols;
 - h) Any other information susceptible to impede the competitors' participation on equal terms.
3. The publication of the pre-qualification notice shall observe the same rules which apply to the subsequent procedure.

Article 51 **On the pre-qualification documents**

1. Under the pre-qualification procedure, the pre-qualification documents shall be provided to each competitor, so that these ones can submit all data necessary for decision-making.
2. Pre-qualification documents shall at least include the information referred to in Appendix 4 to this decree.

3. Pre-qualified competitors shall keep the documents concerning the fulfillment of the pre-qualification requirements and make them available in such ways and at such moments as the Public Service may ask for them.

4. The price for the pre-qualification documents shall only reflect the cost of their printing and delivery to the competitors.

Article 52

On the amendments to pre-qualification notices

1. The Public Service may modify the demands regarding the pre-qualification documents until the third day before the expiration date for submitting such documents in case exceptional reasons exist to justify it, and those modifications shall be published in the same terms and conditions as the pre-qualification notice has been published.

2. If needed be, the entity itself will suspend the procedure and give an extension of time for the pre-qualification documents to be submitted.

Article 53

On the explanation on pre-qualification documents

1. The competitors are entitled to ask the Public Service, in writing, for an explanation on the pre-qualification documents, within the period of time set in these documents.

2. Once the request is received in terms of the previous number, the Public Service shall answer it within the shortest possible deadline.

3. The answer to any request which might also be helpful to other competitors shall be made known to all those to whom or to which the Public Service has provided the pre-qualification documents, without identifying the request's origin.

Article 54

On the additional proof of the pre-qualification requirements

1. The jury may exceptionally ask the competitor that has been pre-qualified to prove again his or its qualifications, accordingly to the same criteria applied for the pre-qualification, within the deadline that the former provides.

2. In this case, the deadline set for the end of the pre-qualification procedure shall be extended, all of the competitors having to be informed thereof.

3. The competitor that has not succeeded in proving again his or its qualifications when he or it has been asked therefor shall be disqualified.

4. As for the situation referred to in the previous number, the jury is bound to promptly notify each competitor that has been asked for proving again his or its qualifications to satisfactorily do so.

Article 55

On the validity of pre-qualification requirements

Pre-qualification competitors shall keep the documents concerning the fulfillment of the pre-qualification requirements and make them available in such ways and at such moments as the Public Service may ask for them.

CHAPTER 3 STEPS CONCERNING PROCUREMENT PROCEDURES WITH A COMPETITIVE NATURE

Section 1 On the common rules of proceduring

Article 56 On the stages of competitive procedures

1. The competitive procurement procedures have the following common stages:
 - a) Opening and publication;
 - b) Preliminary conference;
 - c) Receiving of bids;
 - d) Public ceremony for the opening of bids envelopes by the incharged committee;
 - e) Exclusion or admission of competitors made by the jury;
 - f) Assessment, selection and classification of competitors made by the jury;
 - g) Publication of the intention of awarding the contract;
 - h) Deadline for recheck requests to be lodged by the competitors;
 - i) Contract signing.
2. Regardless of the common stages laid down in the previous number, each competition follows the specific rules of its proceduring provided in law and in the competition documents.

Section 2 On the procedure opening and the notices publication

Article 57 On the open procedure opening

1. Competition opening is the proceduring stage in which the Public Service calls, by means of a notice, all potential suppliers to take part in the procurement operation.
2. Notices shall at least include the elements reported in Appendix 5 to this decree.

Article 58
On the competition program

By means of the competition program, the Public Service defines the calendar according to which each procurement procedure shall occur, since the competition opening until the contract signing.

Article 59
On the notice for tendering

1. The notice for tendering consists in calling those potentially interested for submitting their bids, so that these ones can be assessed.
2. The notice for tendering shall point out the factors that need to be taken into consideration in assessing the bids and, as far as possible, the way how these ones will be quantified.
3. As to the procedure limited by pre-qualification, the restricted procedure and the negotiated one, the notice shall be replaced by an invitation addressed to previously selected suppliers, which may be or not published according to the decision of the Public Service that launches the procedure.
4. The entity competent to launch the procedure shall sign the notice or the invitation.

Article 60
On the invitation relating to the procedure limited by pre-qualification and to the restricted procedure

1. As for the procedure limited by pre-qualification, the Public Service invites the competitors that have already been pre-qualified.
2. This invitation shall be accompanied with the competition documents, in terms of what is mentioned in this statute and in the complementary rules specific for this procedure.
3. The jury that has been in charge of assessing the competitors' compliance with the pre-qualification requirements shall also assess their bids.
4. Besides the prescribed documents, the pre-qualified competitors may be demanded to present a statement of honor clarifying whether or not they keep on fulfilling those requirements, as well as an update to the information initially demanded in the pre-qualification documents.
5. In case the point is a contract of an amount higher than US\$ 100.000 (a hundred thousand American dollars), pre-qualified competitors shall also include in their statement of honor the following topics:
 - a) Access to credit lines, available funds and other financial resources;

- b) Work agenda and contracts won after the pre-qualification notification;
 - c) Legal actions in progress to which the competitor is one of the contending parties;
 - d) Equipment and personnel availability to execute the contract, in case the competitor will be awarded this one.
6. As to the restricted procedure, invitation is only addressed to the suppliers that have previously been selected by the Public Service.

Article 61 **On the notices publication**

1. In view of ensuring that the interested ones will be properly informed, notices publication concerning the below mentioned procurement procedures shall be compulsory:

- a) National open procedure;
- b) International open procedure;
- c) Pre-qualification procedures.

2. Notices publication shall obey the following rules:

- a) All the notices referred to in the previous number shall be published in the press;
- b) The notice for a national open procedure shall be published in at least one newspaper with countrywide circulation and of Portuguese or Tetum expression;
- c) The notice for an international open procedure shall be published in at least two newspapers with international coverage and an undisputable reputation and of English expression or any other expression used in international trade, as well as in one newspaper with countrywide circulation and of Portuguese or Tetum expression;
- d) The notices shall be sent at the same time to every mass media in which publication is wanted.

3. Without detriment to the compulsoriness of the printed publication in newspapers, notices may also be published in different mass media as well as in electronic media, in accordance with regulations and procedures applicable to e-commerce.

4. This article's rules shall apply, with the pertinent adaptations, to the other procurement procedure's steps which require to be published.

Article 62 **On the competition documents**

1. The Public Service shall provide each competitor with a set of documents according to the established program, within the deadline set in the notice.

2. The minimum requirements concerning the competition documents are described in Appendix 6 to this statute.
3. The price for these documents shall only reflect the cost of their printing and delivery to the competitors.

Article 63
On the preliminary conference

1. According to what is established in the competition documents, the Public Service shall carry out a preliminary conference, on the date and at the time and the place that have been set, in order to clarify all details regarding the procedure under way.
2. The preliminary conference has an open nature.
3. Any spoken instructions passed on in the preliminary conference susceptible to change the content of competition documents shall have no binding effect.
4. When, as a result of the conference, it will be necessary to amend or alter any of the competition terms, such decision shall later on be taken by the Public Service and sent in a written form together to all competitors.
5. If needed be, the preliminary conference may include a visit to the place where the good shall be provided, the work executed or the service rendered.

Section 3
On the receiving of bids

Subsection 1
On the steps concerning the receiving of bids

Article 64
On the essential elements of the bids

1. Bids shall be submitted in accordance with the requirements demanded in the competition documents, which are drawn up for each specific procedure.
2. The amount of money is showed in digits and then written at full length, the latter prevailing in case of contradiction between the both.

Article 65
On the setting of the deadline for tendering

1. The deadlines for entering the bids shall be set according to the type of the applied procurement procedure and within the limits laid down in the complementary rules related thereto.
2. The Public Service may delay the initial deadline for a convenient period of time when there exist reasonable motives therefor.

3. The delays that have been decided under the provision of the previous number shall benefit all competitors, all of them having to be promptly informed thereof at the same time.

Article 66
On the bids delivery and registration

1. Bids shall be directly delivered or sent under registered mail and have to be received within the deadline and at the place or places specifically advertised for that purpose.

2. Bids may also be submitted through other communication media, namely fax or email, whenever the documentation size or type allows it and in case that possibility is foreseen in the competition notice or in the invitation to tender.

3. In case foreseen under the previous number, documents sent by fax or email shall only be accepted depending on the terms and conditions included in the rules and procedures regarding e-commerce which are applicable in the country.

4. The receiving of bids shall be registered, the bids receiving date and time as well as their reference numbers having to be written down in the outside of the packs or envelopes that contain them.

5. Received bids shall be kept at a safe place with access restricted to only authorized personnel.

Article 67
On the bids submission

1. Each competitor may only submit one sole bid.

2. The expenses incurred with the delivery and submission of bids belong to each competitor, regardless of the competition result.

3. Each bid shall be submitted in an individual, opaque, sealed and separate pack or envelope, according to the instructions given in the competition documents.

Article 68
On the validity period of the bids

1. The validity period of the bids shall be enough to permit the comparison among them as well as their assessment and to get all necessary approvals, so that the contract can be signed during such period.

2. Each submitted bid as well as the corresponding security shall be valid for the period specified in the competition documents.

Article 69
On the extension of the validity period

1. Before the expiration of the bids validity period, the Public Service may exceptionally ask competitors to extend that period for up to four weeks.
2. The competitor has the right to refuse the demand without losing his or its bid security, but his or its bid validity will cease on the date initially set.
3. The competitor who or which has accepted an extension to the period of validity of his or its bid shall extend the validity period of his or its bid security or submit a new one that can span the added validity period, otherwise the time extension demand shall be deemed to have been rejected by him or it.

Article 70
On the bids modification

1. Unless otherwise stipulated, the competitor may modify or withdraw his or its bid before the expiration of the deadline for submitting the competition documents without losing his or its bid security.
2. Bid modification or notification of bid withdrawal shall take effect if it has been received by the Public Service before the expiration of the deadline for submitting the competition documents.

Article 71
On the expiration of the deadline to offer bids and the respective effects

1. Once the deadline for submitting the competition documents containing bids is reached, the Public Service shall, at the set time, declare the tender submission as closed and documentally register it.
2. Any bid which has been received beyond the set deadline shall be returned to the competitor without being open, according to the established procedures.

Section 4
On the bid security

Article 72
On the bid security

1. Each competitor shall provide a security for the validity of his or its bid during the period prescribed in the competition documents.
2. This security may be demanded up to a limit of 10 (ten) percent of the bid amount and shall start taking effect on the bid submission date.
3. The validity time of the bid security shall be the one required for assessing the bids and accomplishing other procedural steps indispensable until the contract award decision.
4. This security shall be immediately returned to the competitors that have not been awarded the contract.

5. The Public Service shall keep the bid security provided by the competitor to whom or to which it intends to award the contract until that one is replaced by the execution security.

6. The Public Service may change the bid security into an execution security in case the competitor to whom or to which the contract had been awarded has not provided the latter within the set deadline, without detriment to his or its obligation to pay the difference between both securities.

Article 73 **On the forms of bid security**

The bid security to be provided may be demanded in the form of bills, notes or bonds or of securities provided by a reliable bank, financial institution or insurance company, according to the following rules:

- a) The requested security shall be the same for all competitors;
- b) The requirements concerning the drawer or the security shall be stipulated in the competition documents, as well as the terms and the form of the bid security, so that this one can be considered as acceptable;
- c) Securities shall be subject to the irrevocability clause;
- d) In case both security and drawer meet the requirements demanded in the competition documents, the former can not be refused on the grounds of having been drawn by an individual or a legal entity based outside the country.

Article 74 **On the security drawers confirmation**

1. The competitor has the right to ask in writing the Public Service to confirm the acceptableness of the security drawer or the security and to be also given back the corresponding answer in writing within the shortest possible time after the request.

2. This acceptableness confirmation shall not prevent the Public Service from rejecting the security based on the fact that the drawer or the security, as the case may be, has become insolvent or creditless.

Article 75 **On the loss of the bid security**

1. The competitor shall lose his or its right to claim to be paid back the bid security in case he or it incurs into an action affecting the Public Service, namely when:

- a) He or it withdraws or modifies his or its bid during this one's validity period or after the contract has been awarded to him or to it;

- b) He or it does not pay in full the contract execution security, in terms stated in the competition documents;
 - c) He or it does not fulfill any other condition preceding the contract signing, which is specified in the competition documents;
 - d) He or it has unjustifiably not signed the contract on the date set by the Public Service.
2. The declaration on the loss of the lodged security and its causes shall be timely notified in writing to the competitor.

Article 76
On the repayment of the bid security

1. Bid security shall be promptly given back once the reason justifying its lodgment has ceased to exist.
2. The Public Service shall timely given back the security document once one of the following facts has occurred:
- a) The end of the bid security;
 - b) The end of procurement procedures without a procurement contract having taken effect for the competitor's benefit;
 - c) The bid withdrawal before the deadline for submitting tenders, except in case the competition documents stipulate that such withdrawal is not possible.

Section 5
On the envelopes opening

Article 77
On the opening committee

1. The Public Service that launches the pre-qualification or the competition procedure shall appoint a committee in charge of the envelopes opening.
2. This committee shall be composed of at least three employees of the Public Service, one among them having to be appointed as its chairman.

Article 78
Public ceremony for the envelopes opening

1. On the date set in the pre-qualification documents or in the competition ones and in a public ceremony, the incharged committee shall open the bids envelopes.
2. This public ceremony may be attended by any interested people, but they shall not be allowed to speak.

3. As for the pre-qualification procedures, the ceremony starts with the reading of the procedure's identification, then the envelopes are opened and at last the competitors list is written down, so that everybody can watch it.

4. As for the open procedure, the ceremony starts with the reading of the procedure's identification, then the envelopes are opened, soon thereafter the competitors list is written down together with the tendered quotations, so that everybody can watch it, and read out, and finally a certified copy of that list is made in order to be delivered to the jury.

5. After that, the committee puts the documents together and delivers them to the jury or keeps them at a safe place until delivering them to the jury.

6. The envelopes opening committee shall deliver to the jury all documentation on the day following the opening at the latest.

Section 6 **On the competition's jury**

Article 79 **On the appointment and composition of the competition's jury**

The jury shall be appointed by the entity competent to launch the procedure and shall be composed of at least three ordinary members and one substitutive member, one among the first ones having to be appointed as its chairman and another one as his deputy in case he is unable, but the total number of ordinary members shall always be an odd number.

Article 80 **On the competence of the competition's jury**

The jury is competent to:

- a) Admit or to exclude the competitors solidly based on the requirements demanded in the pre-qualification documents and or in the competition ones, as the case may be;
- b) Decide on the pre-qualification of competitors as to the so-named procedure, based on the requirements demanded in the pre-qualification documents;
- c) Assess bids and to qualify the competitors, according to the selection criteria laid down in the competition documents;
- d) Assess, to select and to classify the competitors;
- e) Propose a competitor to be awarded the contract.

Article 81 **On the working rules of the competition's jury**

1. The jury is deemed to be in full operation from the first working day following the opening of pre-qualification or competition documents.
2. The jury may request a secretary to the entity that has appointed it for the drawing up of its meetings reports and for the handling of its daily business, herein included the causes for exclusion of competitors.

Article 82
On the admission and exclusion of competitors

1. In a private meeting, the jury signs or seals the competition documents and then analyses them.
2. After that, the jury decides on the admission or exclusion of competitors, as well as on their qualification.
3. The criteria to be taken into consideration by the jury are previously set in the pre-qualification or competition documents, as the case may be.

Article 83
On the reading of the bids

Before the jury's private meeting will come to an end, its chairman writes down the list of the admitted competitors as well as that of the excluded ones, explaining, though succinctly, the reasons and grounds therefor.

Article 84
On the bids examination

1. As for the competition procedures, the jury undertakes the documents examination in a private meeting.
2. It shall be excluded the bids that:
 - a) Have been submitted by the same competitor;
 - b) Are not in accordance with the requirements demanded in the competition documents.
3. As for the competition procedures, then the jury's chairman discloses the total amount of money corresponding to each of the admitted bids and their essential points.

Section 7
On the assessment, selection and classification of competitors

Article 85
On the assessment in pre-qualification procedures

1. The jury determines the pre-qualified competitors based on the requirements demanded in the pre-qualification documents.

2. The final classification list is compulsorily written down, just as the meeting final report is drawn up with the respective grounds in an individual way, which will be used as a procedure report.

3. This list is sent to the Public Service and published as prescribed in article 89.

Article 86

On the assessment and selection in competition procedures

1. The jury assesses and classifies the competitors according to the requirements demanded in the competition documents and obeying, as far as possible, to the following analysis order:

- a) Professional qualifications;
- b) Technical capacities and experience;
- c) Financial capacity.

2. Then, the jury assesses the bids, observing the following order:

- a) The deadline for delivering goods, executing works or rendering services;
- b) The quality of goods, works or services;
- c) The preference margin applicable to national competitors or favoring those bids involving local products;
- d) Technical specifications and approvals, if demanded;
- e) Other elements demanded in the competition documents, namely the explaining note for the wanted price or the presentation of the model or prototype for the product to be provided;
- f) The total price and the payment conditions.

3. After that, the jury applies in percentage terms the selection factors stated in the competition documents and ranks the competitors.

4. In case of tie, the award shall always benefit the lowest bid or the one that is economically more favorable, provided the competitor has gotten a positive technical assessment.

5. The final classification list is compulsorily written down, just as the meeting final report is drawn up with the respective grounds in an individualized way, which will be used as a procedure report.

6. Without detriment to the Contracts Committee's powers on the subject, the jury shall take into account what is prescribed in article 60, no 5, paragraphs b) and d) for the

purpose of adequately assessing the actual competitor's capacities in case of awards accumulation, as well as the eventual creation of a dominant position affecting fair market competition and competition's access.

Article 87

On the analysis performed by the Contracts Committee and other authorities

1. When it is competent to the Contracts Committee to ratify the jury's decision, the report of the procedure in progress shall be delivered to this Committee's chairman within three days at the latest after the jury's choice has been made.
2. In the same way, in case the Contracts Committee's decision has to be ratified by higher authorities, the latter shall be submitted such decision within seven days after the date the report has been received.
3. The jury keeps operating until its award proposal has been ratified or refused.
4. In case the jury's decision has been ratified, recommendation shall be sent to the approving authority and, if necessary, to the authority competent for the contract signing.
5. In case the jury's decision has been refused, the Contracts Committee shall offer the motivation to decide that way and send it to the jury for a new analysis.
6. In the case referred to in the previous number, the jury may propose the competitor classified in the second place to be awarded the contract and so on.
7. The Contracts Committee may refuse the jury's decision based on the grounds referred to in the previous article, no 6.

Article 88

On the refusal of all bids

1. The Public Service is entitled to refuse all submitted bids at any moment before the contract award, each one of the competitors having to be informed of that decision, but it shall not be liable to justify it.
2. In case of exercising that right, the Public Service does not incur any responsibility before the competitors.

Article 89

On the decision publication

1. The announcement relating to the jury's decision containing the list of pre-qualified competitors or the intention of awarding the contract to one of the competitors shall be put up in the usual places used by the Public Service that has launched the procedure, succinctly mentioning the reasons for the choice.

2. This announcement shall remain visible to the public for at least five days after its publication as for the pre-qualification procedures and for at least 14 working days thereafter as for the competition procedures.

Article 90
On an abandoned bid

1. After being duly notified, the chosen competitor classified in first place that does not sign the contract or does not provide the contract execution security, on the date set for these procedural steps, shall see his or its bid being declared as abandoned, his or its bid security in favor of the awarding entity being also declared as lost.

2. In the situation of an abandoned bid, the Public Service may opt for one of the following ways:

a) To make use of its right to refuse all bids, according to what is foreseen in the present statute;

b) To select another valid bid in accordance with the order of results gotten in the assessment stage and to perform again all procedural steps for notification and acceptance in view of the later contract award.

CHAPTER 4
STEPS CONCERNING PROCUREMENT PROCEDURES WITHOUT A
COMPETITIVE NATURE

Article 91
On the procedure soliciting tenders on quotations

As for the procedures soliciting tenders on quotations, the final bids shall be assessed and compared by the Public Service itself, so that this one can make its choice according to the following general rules:

a) The lowest-priced bid, subject to a preference margin applicable to national competitors or favoring those bids involving local products;

b) The lowest-priced bid, assessed according to criteria specified in the competition documents, such criteria having to be objective, quantifiable and expressed in monetary terms.

Article 92
On the steps concerning the procurement procedure by direct agreement

1. The Public Service may opt for the direct agreement in the following cases:

a) When there exists a sole provider for goods, works or services to be supplied, without any reasonable alternative or substitute;

b) When there exists a provider that has exclusive specific rights concerning the goods, works or services to be supplied, without any reasonable alternative or substitute;

c) When the contract has for object an expertise rule, an investigation, an experiment, a study or a development or the acquisition or restoration of works of art or of historical interest and it will be not possible a competition, for the supplier is the sole one that is reliable and immediately available to achieve the purpose in question;

d) When, in accordance with a contract previously signed together with a certain supplier responsible for a project's design, it shall be required the purchase of vital items from a specific provider as a condition to ensure the contract execution or the products quality;

e) Urgent acquisitions;

f) Additional supply of parts or spare parts by a competitor whose bid has already been accepted and that has been previously awarded the corresponding contract.

2. There shall be a documentary record of all operations and of the justifying circumstances concerning the use of this procedure, in terms laid down in this decree and other complementary regulations.

Article 93

On the limitations in using the procedure by direct agreement

1. As to the procedure by direct agreement, the Public Service directly contacts with the future awarded person or entity in order to enter into a contract with him or it, founded on special reasons.

2. This procedure cannot be used in the cases foreseen in the previous article, no 1, paragraph c) when the contract in question comprises the goods production in such quantities allowing their commercial viability or the return on investment relating to the research and development costs.

3. In the case referred to in the previous article, no 1, paragraph d), the new contract may be made according to a procedure by direct agreement within the limits authorized in article 9 of this compilation when at least one of the following circumstances occurs:

a) A need for uniformity concerning goods, works or services;

b) A need for compatibility with the goods, works or technical services already received.

Article 94

On the direct agreement for urgent acquisitions

1. The Public Service may apply the direct agreement procedure to urgent acquisitions in the following situations:

a) When there exists an urgent and unpredictable need, to which the procurement beneficiary has not given rise, with regard to the works, goods or services, thus it being not feasible to launch competition procedures or any other procurement methods;

b) In case of an official declaration of catastrophe or emergency situation that compels to the need of executing works, supplying goods or rendering services in order to prevent the loss of lives or Government property or to satisfy other demands forcing an urgent action in view of defending the public interest.

2. In this case, the Public Service shall contract by direct agreement only the goods, works or services strictly necessary to face the emergency situation and satisfy the immediate needs.

Article 95 **On the steps concerning simplified procedures**

1. The heads of the entities mentioned in article 15, paragraphs d), e), f) and g) may delegate to other leading people under them the power to make common expenses for periodic supplies duly foreseen in the State Budget until the amount of US\$ 1.000,00 (one thousand American dollars), without being exempt from checking the availability of goods or services on the side of the Central Service for Goods Purchasing.

2. The steps concerning simplified procedures are established in the complementary regulations of the Ministry of Plan and Finance.

3. The leading personnel of the entities authorized to operate in a decentralized way and according to simplified procedures shall be in charge of supervising and controlling the development of these operations and take the responsibility for approving and signing the contracts belonging to their area of competence, without detriment to the faculty of delegating their powers in terms of law.

CHAPTER 5 **ON THE RECHECKS AND APPEALS**

Article 96 **On the right to a recheck**

1. The competitors that consider themselves affected during the course of the procurement procedure have the right to ask the Public Service for a recheck of their situation for the following reasons:

a) Non-fulfillment of the rules laid down in the present decree or in its complementary regulations;

b) Non-fulfillment of the terms and conditions stated in the pre-qualification or competition documents;

c) Non-compliance with a decision adopted by the jury susceptible to have infringed the existing legal rules.

2. In the cases referred to in the previous number, paragraphs a) e b), the request for a recheck shall be lodged within five days from the fact that has given rise thereto.

3. In case of no 1, paragraph c), the deadline to request a recheck shall be set in the pre-qualification or competition documents and shall also be advertised in the award decision notice.

Article 97

On the entity competent to examine the recheck request

The entities authorized to launch the procurement procedures for which they are in charge are competent to examine and decide the recheck request referred to in the previous article.

Article 98

On the proceduring of the lodged recheck request

1. The Public Service shall receive the recheck requests that have been lodged and decide on their admissibility within five days at the latest.
2. The sole acceptable reason to declare the non-admissibility is the fact that the request has been lodged beyond the deadline.
3. Once the recheck request has been admitted, a decision shall be taken within a two-day deadline upon its admissibility and later on upon the procedure suspension.

Article 99

On the suspensive effects

1. The competent entity may suspend the procurement procedure for a five-day deadline after the competitor's request has been received.
2. The competent entity may extend the suspension time limit for a maximum period of another five days when there exist justifying motives for so deciding.
3. As long as there exists no definitive administrative decision concerning the recheck request or the hierarchical appeal, it shall be forbidden to:
 - a) Open the envelopes containing bids, as for the competition procedures;
 - b) Hold the negotiation meetings, as for the negotiated procedure;
 - c) Award a contract, as for all procedures.
4. Judicial remedy has no suspensive effects.

Article 100

On the decision upon the lodged recheck request

1. Once the case has been analyzed, the competent authority shall decide, within a 12-day deadline, whether it accepts or refuses the lodged recheck request.

2. The decision upon the lodged recheck request shall be reported in a document mentioning the grounds that have been taken into consideration as well as the law that has been applied for that purpose, and all those interested shall immediately be notified thereof.

Article 101

On the subsequent right to a hierarchical appeal

1. Competitors not resigned with the decision taken with regard to their recheck request may lodge a hierarchical appeal addressed to the competent authority within five days after the date decision upon the recheck request has been notified.

2. The hierarchical appeal may suspend the procedure for the maximum period of five days.

Article 102

On the entities competent to decide the hierarchical appeal

1. The leaders of the State organs of power, ministers and secretaries of State, in terms of the respective organic laws, are competent to examine and decide hierarchical appeals concerning procurement which have been lodged against the decisions adopted by:

a) The leading people specially appointed and authorized by them to execute procurement operations;

b) The heads of autonomous services, the public entities and other bodies with administrative and financial autonomy under their hierarchy;

c) The other legal entities with a State share higher than 50 (fifty) percent, which, although having no corporate nature, mainly pursue public purposes.

2. The Prime Minister is the entity competent to examine and decide the hierarchical appeals concerning procurement which have been lodged against the decisions adopted at first level by the leaders of the remaining State organs of power, ministers and secretaries of State.

3. In case the Contracts Committee shall give its opinion before the contract approval, this same Committee shall also give its opinion on the lodged recheck request prior to the hierarchical appeal decision.

Article 103

On the decision upon the hierarchical appeal

1. Once the case has been analyzed, the competent authority shall decide, within a five-day deadline, whether it accepts or refuses the lodged appeal.

2. The decision upon the lodged appeal shall be reported in a document mentioning the grounds that have been taken into consideration as well as the law that has been applied for that purpose, and all those interested shall immediately be notified thereof.

3. Judicial remedy has no suspensive effects.

TITLE 3 SPECIAL AND TEMPORARY PROVISIONS

Article 104 On the patrimonial declaration

Each public employee or agent of Public Administration belonging to the services in charge of executing procurement operations shall present a declaration concerning his or her personal property and that of his or her spouse or of the one with whom he or she cohabits, in terms to be determined by a joint regulation of the Ministry of Plan and Finance and the Ministry of State Administration.

Article 105 On the contracts for professional, design and consultancy services

Professional services to be rendered by citizens of the Democratic Republic of East Timor in order to satisfy the public services needs are ruled in terms of the Statute of Public Administration Personnel and its complementary regulations.

Article 106 On the special regimes

All the ministries competent for developing the activities listed in article 2, no 3, shall submit to the Council of Ministers the bills containing the special regimes for public procurement within 90 days from the date this decree-law will enter into force, and the existing regime shall apply to them as long as the new ones will not yet be effective.

Article 107 On the duty of previous consultation

1. All public services, decentralized or not, have the duty to check, at a moment prior to the procedure, the availability of goods to be provided by the Central Service for Goods Purchasing.

2. The provision of the previous number shall not bind public sector companies.

Article 108 On the complementary instructions

The Minister of Plan and Finance has the faculty of issuing the complementary instructions of a general nature necessary for implementing the present statute.

Article 109 On the modified regulations

Article 16, no 2 and article 36 of Decree-Law no 14/2003 of 24 September, which rules on the Public Sector Companies, shall adopt the following text:

Article 16
Property

2. Public Sector companies shall manage and freely decide in regard to their property assets without dependence from the rules relating to the private ownership of the State, except for the special rules established in the respective by-laws and in the Public Procurement Regime, which their operations have to match.

Article 36
Subsidiary law

Public Sector Companies are governed by the present decree-law, by the respective by-laws and, for what is not specially regulated, by the rules of private law as well as by the Public Procurement Regime.

Article 110
On the public contracting regime

Specific rules on public contracts are laid down in a Government statute.

Article 111
On the administrative infringements

Specific rules concerning administrative infringements against public procurement and public contracting regime are set in a Government statute.

Article 112
Repealing rule

The UNTAET's Regulation 2000/10 on Acquisitions for East Timor's Public Administration and any other provisions contrary to what is prescribed in the present decree are hereby repealed.

Article 113
On the procedures already started

Procurement procedures which have already been launched when this statute will enter into force shall proceed until their end according to the previously existing rules.

Article 114
On the gradual implementation of decentralization

1. Decentralization for procurement operations as foreseen in the present compilation shall begin being gradually implemented at the authorized entities level, after each one of them has been specifically analyzed and upon the Minister of Plan and Finance approval.

2. The rules for the gradual process of the organs admission into the system of decentralized acquisition may be determined by ministerial regulation from the Ministry of Plan and Finance.

Article 115
Entry into force

The present statute shall enter into force sixty days after its publication date.

Approved by the Council of Ministers on 5 October 2005.

The Prime Minister,

Mari Bim Amude Alkatiri

The Minister of Plan and Finance,

Maria Madalena Brites Boavida

Promulgated on 8 November 2005.

To be published.

The President of the Republic,

Kay Rala Xanana Gusmão

APPENDIX 1

Additional definitions related to procurement

“Awarding authority”: The Public Service that opens a competition in view of entering into a public contract. Also called as “awarding entity”.

“Awarded bidder”: the individual or the organization that has been awarded a public contract. Also called as “supplier” or “provider”.

“Competition”: The procedure prior to the public contract which takes place so that the successful bidder can be impartially chosen by a jury.

“Decentralization”: For procurement purposes, it is the competence that Public Services have to launch procurement procedures and award public contracts in order to satisfy their needs.

“Entities”: For procurement regime purposes, it is any organ, public service institution or similar which is legally entitled to enter into a public contract.

“Beneficiary entity”: In terms of the present statute, it is any entity, organ, public service institution or equivalent thereto to which goods are being provided and services rendered.

“Drawer or security”: For the purposes of this statute, it is that individual or organization that replaces the competitor liable to provide one of the securities mentioned in this decree or to pay its amount.

“Bid securities”: the amount of money or the financial instrument equivalent thereto required to the competitor as a way to protect the Public Service from the risks arising from eventual withdrawals or modifications of the submitted bids.

“Contract execution securities”: The amount of money or the financial instrument equivalent thereto required to that one who or which has been awarded a public contract as a way to protect the awarding entity from the risks arising from the eventual non-fulfillment of the public contract.

“Procurement operations”: Any action undertaken to get the provision of goods or the rendering of services.

“Procurement procedure”: All legal steps taken in order to achieve the purchase of goods and services or the execution of works with public purposes.

“Competition procedures”: All the procedures upon which the public contract is awarded accordingly to the jury’s assessment.

“Bid”: By bid it is meant the tender submitted by a competitor in a procurement procedure by meeting the requirements and filling out the documents as demanded by law.

APPENDIX 2
Amount limits for starting procurement operations, assessing and approving
public contracts signing
(Article 15)

The entity that launches the procurement procedure		Organs that ratify public contracts award and signing
The Procurement Service under request of the interested Public Service		Review
		Contracts Committee, for contracts with a value of at least US\$ 200.000
		The Prime Minister, for contracts with a value of at least US\$ 1.000.000; The Minister of Plan and Finance, for contracts with a value of at least US\$ 500.000, after consulting the Prime Minister and the Minister in charge for the sector in question; The Procurement Service, provided with a power delegation from the Minister of Plan and Finance, for contracts with a value from US\$ 200.000 to less than US\$ 500.000, after consulting the Minister in charge for the sector in question.
		The Procurement Service provided with a power delegation from the Minister of Plan and Finance
Government members and leaders of the remaining State organs of power, for contracts with a value not higher than US\$ 10.000		Leaders of the remaining State organs of power, ministers and secretaries of State
Heads of autonomous services and competent public entities, for contracts not exceeding US\$ 10.000		The heads of autonomous services, the public entities and other bodies with administrative and financial autonomy, including companies with mixed capital.
Leading people specially appointed and authorized, for contracts not exceeding US\$ 5.000		The leading people specially appointed and authorized by the leaders of the State organs of power and by the Government members, including all the remaining public organs and services not mentioned previously.
Lease with an annual rent of at least US\$ 100.000	The Procurement Service under request of the interested Public Service	The same decision levels applicable to the remaining procurement procedures. The lease of an immovable located abroad requires authorization from the Minister of Plan and Finance and the Minister of Foreign Affairs and Cooperation.
Lease with an annual rent lower than US\$ 100.000	The interested Public Service	

APPENDIX 3 REQUIREMENTS FOR PRE-QUALIFICATION NOTICES

Notices for starting a pre-qualification procedure, referred to in article 50 of this decree, shall at least contain the following information:

- a) The name and the address of the Public Service;
- b) The issue place and date and the authorizing entity;
- c) An unchangeable declaration of the type of competition;
- d) A declaration that the point is a pre-qualification notice, listing all the legally demanded requirements as well;
- e) The goods or the services under a procurement procedure, including their general requirements of quantity and quality;
- f) The predicted date and place for the goods or services to be provided;
- g) The program for the pre-qualification procedure, the means to get the pre-qualification documents as well as the place where to get them;
- h) The price of the form, if any, to be collected by the Public Service and the list of the pre-qualification documents and forms;
- i) The idioms in which the documents are available;
- j) The place and the deadlines for submitting the pre-qualification documents;
- k) The date of notification of the pre-qualification results;
- l) Any other information data on the competition whose publication, according to the Public Service, might be useful or which are regulated by the applicable specific rules and procedures.

APPENDIX 4
PRE-QUALIFICATION DOCUMENTS

The documents for pre-qualification procedure, referred to in article 51 of this law, shall at least comprise the following ones:

- a) The instructions for preparing and submitting pre-qualification requests;
- b) A summary of the main general terms and conditions related to the contract to be made;
- c) Any documentary evidence and other information which the competitors shall submit in order to prove their qualifications and that they meet the requirements demanded in this statute;
- d) The documents proving the fulfillment of any other specific requirements that the Public Service may establish in accordance with the existing regulations.

APPENDIX 5
REQUIREMENTS FOR COMPETITION OPENING NOTICES

The competition opening notices, referred to in article 57 of this decree, shall at least contain the following information:

- a) The name and the address of the Public Service that launches the procedure, as well as the issue place and date and the authorizing entity;
- b) An unchangeable declaration of the type of competition;
- c) A declaration that the point is a competition opening notice;
- d) The address where and days and schedule when to obtain the competition program, which have not been advertised together with the notice.

APPENDIX 6 COMPETITION DOCUMENTS FOR BIDS SUBMISSION

The competition documents for bids submission, referred to in article 62 of this statute, shall at least include the following information:

- A) The instructions for preparing and submitting bids;
- B) The features of goods or services which make the object of the procedure, concerning the following minimum information:
 - 1- Quantity;
 - 2- Demanded requirements in terms of quality;
 - 3- Design specifications and other requirements demanded for the delivery and presentation of plans and other technical documents in case they will be necessary;
 - 4- Descriptive models regarding the technical features of goods or services to be purchased;
 - 5- Methods for analyzing the quality of these ones, in order to determine their adequacy to the required specifications;
 - 6- Packaging;
 - 7- Brands or other signs and symbols;
 - 8- Price bids, which shall be sent within a separate envelope;
 - 9- Date and place predicted for the obligations fulfillment;
 - 10- Methods and procedure for assessing competitors qualification, according to what is foreseen under the present compilation and in the applicable rules and procedure;
 - 11- Conditions for securing bid validity in regard to the drawer and in connection with the security's nature, modality, amount and validity period as well as with the way to satisfy it;
 - 12- Conditions for securing contract performance in regard to the drawer and in connection with the security's nature, modality, amount and validity period as well as with the way to satisfy it;
 - 13- Any other information data on the competition whose publication, according to the Public Service, might be useful;
 - 14- A summary of the main terms and conditions necessary for the contract to be made which are not included in the pre-qualification procedure, if it is the case;

15- Any documentary evidence and other information which the competitors shall submit in order to prove their qualifications and that they meet the requirements demanded in this statute, in case a pre-qualification procedure has not taken place;

16- A power of attorney authorizing the one who submits the bid to incur obligations on behalf of a competitor, in case this faculty does not arise from the other enclosed documents;

17- In case the competitor is a society, a group or any other collective organ, it shall be submitted, together with the bid and the covenant or constitutive instrument, a probative document stating that one takes full responsibility for the acts of its representative;

18- Declaration on the goods, the works or the services that the competitor will need to subcontract to other entities in order to bring into effect the contract's main object, in case such possibility has been included within the conditions for submitting a bid;

19- Any other documents necessary to prove the fulfillment of specific requirements established by the entity that launches the procedure.