

Jornal da República, Série I, no. 2
Thursday, January 15, 2009

DECREE-LAW NO.2/2009

Special Legal System on Supply to the Autonomous Department for Drugs and Health Equipment (“Serviço Autónomo de Medicamentos e Equipamentos de Saúde” E.P., SAMES)

Decree-Law no.10/2005, of November 21, 2005, creating the Legal System on Supply, determines that a special legal system on supply shall be established at SAMES so as to ensure that this states-owned company, set up by Government Decree No.2/2004, of April 21, 2004, may properly perform the functions laid down in its Articles of Association.

The Government, pursuant to Article 115, number 3 of the Constitution of the Republic and of Article 106 of Decree-Law no. 10/2005, of November 21, 2005, therefore establishes the following to be enforced as law.

CHAPTER ONE GENERAL PROVISIONS

SECTION ONE GENERALITIES

Article 1 Objective

This decree-law aims to set forth special procedures for buying drugs, medical consumables and medical equipment required for the functioning of the health system, as well as services and works execution in the framework of the competencies of the Autonomous Department of Drugs and Medical Equipment (“Serviço Autónomo de Medicamentos e Equipamentos de Saúde, E.P. – SAMES), while safeguarding the enforcement of the general principles laid down in Decree-Law no.10/2005, of November 21, 2005.

Article 2 Scope of Application

The scope of application of this decree-law covers the supply procedures using the SAMES own budget, in the framework of Public Budget or bilateral and multilateral funds.

SECTION TWO

POWERS IN THE SUPPLY PROCEDURE

Article 3

Entity competent for authorising supply procedures

The entity competent for authorising supply procedures is the Director-General of SAMES.

Article 4

Delegation of powers

1. The Director-General of SAMES may delegate in writing the power to authorise supply procedures to one of the SAMES senior executives.
2. The senior executive who receives the delegated powers may not sub-delegate them.
3. The Director-General shall not be exonerated from the responsibility for complying with the law in each supply procedure carried out by an entity who received delegated powers from him.

Article 5

Powers of the Supply Department of SAMES

1. The Supply Department of SAMES has the power to buy drugs, medical consumables, medical equipment, services and works in co-operation with the relevant departments, in accordance with the procedures determined by the competent authority and, namely:
 - a) Prepare the tender papers, manage their public announcement and subsequent diligences;
 - b) Participate in the evaluation of the bids.
 - c) Announce the awarding intentions.
 - d) Process claims resulting from the awarding.
 - e) Prepare the contract papers.
 - f) Manage contract execution, in co-ordination with the relevant departments.
2. The Supply Department of SAMES shall also perform the following functions:
 - a) Prepare the annual supply plan of SAMES and secure its compliance;
 - b) Create and keep the vendor record, containing a vendor list by area of expertise, as well as information on each vendor's performance;
 - c) Manage correspondence with bidders and vendors;
 - d) Hold periodical meetings with other relevant departments, with a view to promoting the rules in force governing supply;
 - e) Recommend to competent authorities within SAMES the appropriate supply procedures, so as to secure the best cost-to-quality-to-quantity relationship;
 - f) Propose punishing measures to be imposed on people who infringe the rules governing the present supply system;
 - g) Keep, for a five-year period, all papers concerning the supply operations.

Article 6

Powers of the SAMES Board of Directors

The SAMES Board of Directors has the following powers, in terms of supply:

- a) Analyse the tender reports and approve the contract awarding bids;
- b) Issue advice regarding claims and appeals lodged by the bidders;
- c) Monitor contract execution;
- d) Make decisions regarding the punishing measures against people who infringe the rules governing the present supply system.

CHAPTER TWO

SUPPLY PROCEDURES

SECTION ONE

TYPES OF PROCEDURE

Article 7

Supply procedures

SAMES accepts the following types of procedure:

- a) Open tendering, mandatory for contracts exceeding 1 million USD, to which any party may submit a bid, provided that they meet the requirements laid down in the tender papers;
- b) Partial invitation, for contracts equal to or lower than 1 million US and higher than 500,000 USD, to which only the invited competitors may submit bids;
- c) Request for quotations, for contracts under 500,000 USD;
- d) Contract by direct agreement in exceptional cases, irrespective of the contract amount.

Article 8

Pre-qualification procedure

1. SAMES shall launch a pre-qualification procedure to identify and select, in the framework of a preliminary analysis, which competitors meet the requirements previously laid down in the pre-qualification papers.
2. The pre-qualification procedure may be launched on yearly basis, prior to the launching of the supply procedures by partial invitation and request for quotations.

SECTION TWO TENDERS

Article 9

Open tendering

1. SAMES shall launch the open tendering procedure for contracts exceeding the amount of 1 million USD, with a view to promoting the participation of national and international competitors.
2. In the open tendering procedure and all its subsequent stages the RTDL legal currency shall be used, as well as the English language.

Article 10

Partial invitation

1. SAMES shall launch the partial invitation procedure by extending an invitation to all suppliers selected by way of the pre-qualification procedure.
2. Partial invitation is mandatory in acquisitions between 500,000 and 1,000,000 USD.
3. In the partial invitation procedure and all its subsequent stages the RTDL legal currency shall be used, as well as the English language.

Article 11

Supply by Request for Quotations

1. SAMES shall launch the Request for Quotations procedure, without tender formalities, by extending an invitation to at least three suppliers previously known by SAMES, or selected in advance by way of the pre-qualification procedure.
2. The request for quotations procedure may be used whenever the contract amount is lower than 500,000 USD.
3. In the request for quotations procedure the RTDL legal currency shall be used, as well as the English language, safeguarding those translations that need to be done into Tetum or Portuguese.

Article 12

Supply by Direct Agreement

1. Supply by direct agreement is an exceptional procedure, whereby SAMES, without launching tender procedures, may address one or more suppliers to meet specific supply requirements, provided that the following special circumstances apply:
 - a) When there is only one supplier of drugs, medical consumables, medical equipment, services and works, without alternative or reasonable substitute;

- b) When there is one supplier who holds specific exclusive rights over drugs, medical consumables, medical equipment, services and works, without alternative or reasonable substitute;
 - c) When SAMES, after launching twice the procedures for open tendering, or partial invitation, or request for quotations, failed to receive bids that fulfilled the awarding criteria;
 - d) In the case of emergency supplies;
 - e) In cases of additional supply of unforeseen quantities, by a competitor whose offer had been previously accepted, in the framework of another signed contract.
2. In contracts by direct agreement due to emergency circumstances, SAMES should only purchase the drugs, medical consumables and medical equipment strictly required to remedy the emergency situation and meet the immediate needs, as follows:
- a) Existence of an urgent unforeseeable need, being not practical to launch tender procedures or request for quotations;
 - b) Official declaration of disaster, or other requirements compelling urgent action in the public interest;
3. In the supply by direct agreement procedure, the RTDL legal currency shall be used, as well as the English language, safeguarding those translations that need to be done into Tetum or Portuguese.

SECTION THREE PROCEDURE SELECTION

Article 13 Selection criteria

1. Procedures should be selected taking into account the amount of the contract and it shall be strictly forbidden to split the amount of the real contract cost into several parcels, so as to prevent any of them from reaching the established maximum amounts.
2. The selected procedure should be the most appropriate for meeting the supply requirements and securing the best cost-to-quality-to-quantity ratio.
3. The open tendering procedure should be given preference, whenever possible.

CHAPTER THREE STEPS IN THE PRE-QUALIFICATION PROCEDURE

Article 14 Start-up

1. The pre-qualification procedure starts with the publication of the pre-qualification notice, inviting all potential competitors to bid.

2. The pre-qualification procedure shall comply with the standard tender procedure rules.

Article 15

Requirements of pre-qualification notices

1. Every pre-qualification notice should contain the following information:
 - a) SAMES address and contacts of the entity in charge of processing the bids;
 - b) Place and date of notice issue and authorising authority;
 - c) Declaration that this is a pre-qualification notice, fulfilling all other legal requirements;
 - d) Reference to the drugs, medical consumables, medical equipment, services and works whose supply is subject to pre-qualification, including general requirements of quantity and quality;
 - e) Schedule of the pre-qualification procedure, the means to obtain the pre-qualification papers and the place where the latter can be obtained;
 - f) Price, if there is one, charged by SAMES for the pre-qualification papers and forms;
 - g) Languages in which the papers are available;
 - h) Place and deadlines for submitting the pre-qualification papers;
 - i) Date of notification of the pre-qualification outcome.
2. Pre-qualification notices should not request or receive from the competitors any information concerning:
 - a) Price bid;
 - b) Any other information that may obstruct the on-equal-foot participation of the competitors.

Article 16

Pre-qualification papers

1. In the pre-qualification procedure, pre-qualification papers shall be provided to all competitors so that they can submit the required data.
2. Pre-qualification papers should include, at least:
 - a) Instructions on the preparation and submission of pre-qualification requests;
 - b) Summary of the main general terms and conditions of the contract to be signed;
 - c) Any documentary evidence, or other information, that should be submitted by competitors to prove their qualifications.
3. Pre-qualified competitors should continue to meet the pre-qualification requirements and make them available in the forms and opportunities that may be requested by SAMES.

Article 17

Amendments to pre-qualification notices

1. SAMES may amend the pre-qualification papers up to the third day before the deadline established for pre-qualification bid submission, if there are exceptional reasons accounting for such procedure. The said amendments should be made public in terms and conditions identical to those of the pre-qualification notice.
2. The deadline for submitting the pre-qualification bids may be extended, if necessary.

Article 18

Clarifications on pre-qualification papers

1. Competitors have the right to request, in writing, clarifications to SAMES on the pre-qualification papers, in the period laid down in the pre-qualification papers.
2. Once a request has been received pursuant to the foregoing paragraph, SAMES should answer as soon as possible.
3. Answers to any requests that may be of interest to other competitors should be reported to all of those whom SAMES has supplied the pre-qualification, without identifying the source of the request.

Article 19

Additional verification on pre-qualification requirements

1. The jury may exceptionally require an already qualified competitor to prove his qualifications once more, according to the same criteria adopted in pre-qualification, assigning him a deadline to make such proof.
2. In this case the final deadline established for completing the pre-qualification procedure should be extended and such extension should be communicated to all competitors.
3. A competitor who cannot again make proof of his qualifications, when requested to do so, should be declassified.
4. If the foregoing paragraph applies, the jury has the obligation of promptly notifying each competitor who has been asked to make new proof of his qualifications to do it in satisfactory terms.

Article 20

Validity of pre-qualification requirements

The pre-qualified competitors should continue to meet the pre-qualification requirements and make them available in the forms and opportunities that may be requested by SAMES.

CHAPTER FOUR STAGES IN THE TENDER PROCEDURE

SECTION ONE

STANDARD RULES OF PROCEDURE

Article 21

Tender stages

Supply by tender procedure has the following stages:

- a) Opening and publication;
- b) Preliminary conference;
- c) Reception of bids;
- d) Public session in which the jury opens the bid envelopes;
- e) Rejection or admission of competitors by the jury;
- f) Assessment, selection and classification of competitors by the jury;
- g) Intention to award the contract made public;
- h) Deadline for competitors to submit claims;
- i) Signature of contract.

SECTION TWO

OPENING AND PUBLICATION

Article 22

Opening and publication of tender notices and invitations

1. Tender opening is the procedural stage in which SAMES, by notice or invitation, calls upon all potential suppliers to submit their bids for evaluation.
2. Tender notices should at least include the following:
 - a) SAMES address, place, date of issue and authority authorising the tender;
 - b) Declaration stating that this is a notice inviting tender;
 - c) Address, schedule and timetable for acquiring the tender papers;
 - d) Dates established for each tender stage, from invitation to contract signature;
 - e) Factors to be taken into account for evaluation purposes and, whenever possible, the form in which they will be quantified.
3. Publication of notices shall comply with the following rules:
 - a) All notices should be published on the press, at least on one nationwide newspaper in Tetum or Portuguese, and two international newspapers in English;
 - b) Notices shall be sent simultaneously to all the media on which their publication is scheduled;
 - c) In addition to their mandatory publication on newspapers, notices may also be published on other media and informatics media, complying with the rules and procedures established for electronic trade.
4. In partial invitations the notice is replaced by the invitation addressed to previously selected suppliers, which SAMES may decide to publish or not, attaching the tender papers thereto.

5. The entity competent for launching the procedure should sign the notice or invitation.

Article 23

Tender papers

1. Tender papers on bid submission should include at least the following information:
 - a) Instructions for preparing and submit bids;
 - b) Features of drugs, medical consumables and medical equipment, namely quantity, dosage, quality requirements, packaging, or features of services and works;
 - c) Technical quality guarantee papers;
 - d) Price bids in a separate envelope;
 - e) Date and place anticipated for fulfilling the commitments;
 - f) Methods and procedures for evaluation the qualifications of the competitors;
 - g) Conditions for assuring the validity of the offer, as regards both issuer and nature, form, amount and period of validity, and mode of fulfilment;
 - h) Conditions for assuring performance, as regards both issuer and nature, form, amount and period of validity, and mode of fulfilment;
 - i) Any other information which, according to SAMES, can be usefully provided in connection with the tender;
 - j) Summary on the main terms and conditions required by the contract to be signed, not included in the pre-qualification procedure, if applicable;
 - k) Any documentary evidence or other information that should be submitted by the competitors to prove their qualifications and the remaining requirements, if no pre-qualification procedure was launched;
 - l) Instrument drawn up by a notary-public authorising the person who submits the bid to be obliged on behalf of the competitor, if such capacity is not demonstrated by the other bid papers;
 - m) Any other papers required for proving that the specific requirements imposed by SAMES are met.
2. The price of these papers should reflect only the cost associated with their printing and distribution to the competitors.

Article 24

Preliminary conference

1. SAMES may hold a preliminary conference for providing all clarifications regarding the tender.
2. The preliminary conference is open to the public.
3. No verbal instructions given during the conference shall be binding, inasmuch as they may modify the contents of the tender papers.

4. When it is necessary to amend or modify the terms of the tender as a result of a preliminary conference, such decision should be taken later on by SAMES and simultaneously communicated in writing to all competitors.

SECTION THREE RECEPTION OF BIDS

Article 25

Key elements of the bids

1. Bids should meet the requirements laid down in the tender papers.
2. The price shall be given in figures, followed by the amount expressed in full, the latter prevailing in case of differences.

Article 26

Bid delivery deadline

1. Deadlines for delivering the bids should be established as follows:
 - a) sixty days for open tenders, counted as from the date of issue of the tender papers;
 - b) forty five days for partial invitations, counted as from the date of delivery of the invitations.
2. SAMES may extend the deadline initially established for an appropriate period of time, when there are grounds for it.
3. Deadline extensions should be promptly and simultaneously communicated to all competitors.

Article 27

Bid delivery and registration

1. Bids shall be delivered directly or by registered mail and received within the established deadline, at the place or places indicated for their delivery.
2. If the notice or invitation indicates such possibility, bids may be sent by other modes of communication, namely fax or e-mail, whenever such procedure is appropriate and feasible as a function of the volume or type of papers.
3. In the case of the foregoing paragraph, paper acceptance shall depend upon the requirements established in the rules and procedures in force for governing electronic trade.
4. The reception of each bid should be registered by noting down on the respective wrapper (i.e. package or envelope) the date and time of arrival and the sequence number of their submission.
5. The received bids should be kept in a safe place with restricted access, open only to authorised personnel.

Article 28

Submission

1. Each competitor may only submit one bid.
2. Each competitor shall pay for the costs incurred in connection with bid presentation and submission, irrespective of the outcome of the tender.
3. The bid shall be submitted in individual opaque, closed and separate wrappers, following the instructions provided in the tender papers.

Article 29

Bid validity period

1. The period of validity of the bids should be enough to allow for their comparison and evaluation, as well as to ensure all approvals required with a view to having the contract signed within the said period.
2. Competitors should submit a bid, and a tendering security, that shall remain valid for the period indicated in the tender papers.

Article 30

Extension of the bid validity period

1. SAMES may request the competitors, exceptionally and before the bid validity period expires, to extend the validity of their bids for a period up to four weeks.
2. Competitors have the right to refuse such request without losing their tendering security, but the validity of their bid will expire on the initially set date.
3. Competitors who accept to have the period of validity of their bid extended should likewise extend the period of validity of their tendering security, or present a new security that covers the extended period of validity. If they fail to do so, it will be assumed that they refused the request for extension.

Article 31

Modification of the bids

1. Unless otherwise provided for, competitors may modify or withdraw their bid before the end of bid submission deadline, without losing their tendering security.
2. Modification or notification on bid withdrawal will take effect if received by SAMES before the bid submission deadline expires.

Article 32

Closure of the notice or invitation and respective effects

1. Once the deadline for bid submission has expired, at the established hour, SAMES should declare that the period is closed and have a deed drawn up to record this act.
2. Any bid received after the established deadline has expired shall be returned to its sender unopened.

SECTION FOUR

TENDERING SECURITY

Article 33

Tendering security

1. Each competitor should lodge a security to confirm the validity of his bid, for the period laid down in the tender papers.
2. This security may be required up to a maximum 10 percent of the bid value, starting on the date of bid submission.
3. The period of validity of the tendering security should be that which has been requested for evaluating the bids and perform a number of other indispensable acts until the contract is awarded.
4. This security should be immediately returned to those competitors who are not awarded the contract.
5. SAMES should retain the tendering security of the competitor whom they intend to award the contract, until it is replaced by a performance guarantee.
6. SAMES may convert the tendering security into a performance guarantee, in case the winning bidder does not lodge the latter within the established deadline, notwithstanding his obligation to pay the difference between both securities.

Article 34

Forms of tendering security

The tendering security may be requested in the form of letters of credit or guarantees issued by a fit bank or financial institution or insurance company, in accordance with the following rules:

- a) The request should be made to all competitors on equal foot;
- b) Tender papers should stipulate the conditions concerning the issuer or guarantor, as well as the terms and form of the security, in order for it to become acceptable;
- c) Securities must include the clause of irrevocability;
- d) In case the security and the issuer meet the requirements laid down in the tender papers, the said security cannot be rejected on grounds that it was issued by a natural person or a legal person based outside the Country.

Article 35

Confirmation of the security issuer

1. Competitors have the right to request in writing that SAMES confirm the acceptability of a security issuer or a guarantor and to receive a response to such request also in writing within the shortest delay possible.
2. This confirmation of acceptability does not prevent SAMES from rejecting the security on grounds that the issuer or the guarantor, whichever is applicable, became unsolvable or without credit.

Article 36

Loss of tendering security

1. Competitors shall lose their right to claim back their tendering security if their conduct is harmful to SAMES, namely when they:

- a) Withdraw or modify their bid during the period of validity of the said bid, of after having been awarded the contract;
 - b) Do not pay the performance guarantee in full, as laid down in the tender papers;
 - c) Do not comply with any other condition that must be met prior to contract signature, as specified in the tender papers;
 - d) Do not sign the contract on the date established by SAMES, without justification.
2. The loss of the deposited security and its causes shall be timely notified in writing to the competitor.

Article 37

Return of tendering security

- 1. The tendering security should be promptly returned when the reason for its deposit has ceased to exist.
- 2. SAMES should timely return the security paper, after one of the following events has occurred:
 - a) End of tendering security;
 - b) End of supply procedures, without any supply contract entering into force to the benefit of the competitor;
 - c) Withdrawal of the bid prior to the deadline for bid submission, unless the tender papers establish that such withdrawal is not permitted.

SECTION FIVE

STANDING COMMITTEE ON BID EVALUATION

Article 38

Appointment and creation

- 1. The Standing Committee on Bid Evaluation (hereafter CPAP) shall be appointed for the period of one year by the Health Minister by proposal of the Director-General of SAMES. It shall be composed of at least three permanent members and two variable members, plus one substitute member, always safeguarding an uneven number of members. One of them shall be appointed chairman and another substitute in case of impediment.
- 2. CPAP members shall be appointed among the SAMES ranks, preferably including one member of the Supply Department. The Committee should include officials of the Health Ministry with relevant functions or knowledge in the fields of drugs, medical consumables, medical equipment, services and works.
- 3. One permanent member and one variable member shall be officials of the Health Ministry.

Article 39

CPAP powers

CPAP shall have the following powers:

- a) Open the wrappers containing the bids submitted by competitors in all supply procedures;
- b) Admit or reject the competitors, on proper grounds, based on the requirements of the pre-qualification papers or the tender papers, whichever applicable;
- c) Decide on the pre-qualification of competitors in procedures of this nature, based on the requirements of the pre-qualification papers;
- d) Evaluate the bids and rank competitors, according to the selection criteria defined in the tender papers;
- e) Evaluate, select and rank competitors;
- f) Propose the competitor whom the contract should be awarded.

Article 40

Functioning of CPAP

- 1. For each supply procedure, CPAP shall be performing its functions as from the moment when the bids submitted by the competitors are opened.
- 2. CPAP should draw up minutes of the meetings and attend to current business, among which should be included the causes for excluding competitors.

Article 41

Opening of the wrappers

- 1. CPAP shall open the wrappers on the day scheduled in the pre-qualification papers or the tender papers, in public.
- 2. This public act may be attended by any concerned party, but the attendants may not speak.
- 3. In pre-qualification procedures the act begins with the reading of procedure identification. Then the wrappers shall be opened and the list of competitors shall be immediately drawn up, in the presence of all attendants. A copy of this list shall be turned into a document that should be signed by the representative of the competitors and by all CPAP members present.
- 4. In tendering procedures the act begins with the reading of the tender identification. Then the wrappers shall be opened and the list of competitors with the bid prices shall be immediately drawn up. This list shall be drafted in the presence of all participants and read out loud. A copy of this list shall be turned into a document that should be signed by the representative of the competitors and by all CPAP members present.
- 5. The wrapper opening session shall then be adjourned and CPAP will hold a private session for admitting and excluding competitors.

Article 42

Admission and exclusion of competitors

- 1. CPAP shall hold a private session for appraising the tender bids.
- 2. After appraising them, CPAP shall decide as to the admission or exclusion of competitors, as well as their ranking.
- 3. Criteria to be adopted by CPAP shall be made public in advance, on the pre-qualification papers or the tender papers, whichever applicable.

Article 43

List of admission and exclusion

Before the end of the private session held by CPAP for admitting and excluding competitors, a list of admitted and excluded competitors shall be drawn up and certified by all members present giving the reasons and grounds for their decision, although briefly.

Article 44

Bid evaluation

1. In tendering procedures CPAP shall evaluate the tender bids in a private session.
2. Bids shall be excluded if they:
 - a) Are submitted by the same competitor;
 - b) Fail to comply with the requirements laid down in the tender papers.
3. In tendering procedures the chairman of CPAP subsequently announces the total price of each admitted bid and its key attributes.

SECTION SIX

EVALUATION, SELECTION AND RANKING OF COMPETITORS

Article 45

Evaluation in pre-qualification procedures

1. CPAP, based on the requirements established in the pre-qualification papers, shall decide which competitors are pre-qualified.
2. A mandatory list containing the final rank shall be drawn up and the minutes of the meeting drafted, giving the grounds for the rank of each competitor. Both shall be certified by the CPAP members present and have the value of a final report.
3. This list shall be made public according to Article 49 of this decree-law.

Article 46

Evaluation and selection in tendering procedures

1. CPAP shall evaluate and rank the competitors according to the tender paper requirements, inasmuch as possible beginning by evaluating the competitors in the following order:
 - a) Professional background;
 - b) Technical skills and experience;
 - c) Financial capacity.
2. CPAP shall then evaluate the bids, in the following order:
 - a) Delivery deadline;
 - b) Quality of drugs, medical consumables, medical equipment, services and works;

- c) Schedule of conditions and quality guarantee for the drugs, medical consumables, medical equipment, services and works;
 - d) Other requirements of the tender papers;
 - e) Total price and terms of payment.
- 3. CPAP shall then apply the percent values of the selection factors laid down in the tender papers, ranking the competitors.
- 4. Should there be a tie the contract shall always be awarded to the lowest or the most economically advantageous bid, if the competitor has been approved in the technical evaluation.
- 5. A mandatory list containing the final rank shall be drawn up and the minutes of the meeting drafted, giving the grounds for the rank of each competitor. Both shall be certified by the CPAP members present and have the value of a final report.

Article 47

Examination by the SAMES Board of Directors

1. A report on the ongoing procedure should be delivered to the chairman of the SAMES Board of Directors within the maximum deadline of 3 (three) days, after CPAP have concluded their selection.
2. In case the CPAP decision is ratified, the recommendation should be addressed to the Supply Department, for processing the contract.
3. In case the CPAP decision is rejected, the Board of Directors should explain on what grounds they took their decision and refer the report back to CPAP for re-examination.
4. In a situation as referred to in the foregoing paragraph, CPAP may propose the second competitor on the rank and go down the list successively.

Article 48

Rejection of all bids

1. SAMES has the right, at any moment before awarding the contract, to reject all submitted bids. This decision must be reported to all competitors, but does not have to be justified.
2. In case SAMES allege this right, they shall not be liable to the competitors.

Article 49

Decision made public

1. The notice with the decision taken by SAMES, referring to all pre-qualified competitors or the intention to award the contract to one competitor, shall be made public in the usual SAMES locations, briefly explaining the reasons for the choice.
2. This notice should remain visible to the public for at least five days in pre-qualification procedures and for at least fourteen working days after its publication in tendering procedures.

Article 50

Abandoned bid

1. When the competitor ranked in the first place after selection, following his proper notification, fails to sign the contract or lodge the contract performance guarantee on the scheduled date, his bid should be considered abandoned, together with a declaration ruling the loss of his tendering security to the benefit of SAMES.
2. When faced with a situation of bid abandonment, SAMES may choose from one of the following alternative options:
 - a) Use their right to reject all bids;
 - b) Select another valid bid, according to the order of results established during the evaluation stage, and repeat all procedures of acceptance and notification for subsequent award of the contract.

SECTION SEVEN

CLAIMS AND APPEALS

Article 51

Right to claim

1. Competitors who deem to have suffered damage in the course of a supply procedure by tendering, pre-qualification and partial invitation, shall have the right to file a claim to CPAP on the following grounds:
 - a) Non compliance with the rules set forth in this decree-law;
 - b) Non compliance with the terms and conditions laid down in the pre-qualification or tender papers;
 - c) Non compliance with a decision adopted by CPAP that may have infringed the legal rules in force.
2. Claims should be filed within five days after the decision is made public.

Article 52

Stages of claim appraisal

1. CPAP should receive the claims filed and decide on their admissibility within a maximum deadline of five days, referring them to the Director-General or the entity holding powers delegated by him to authorise the supply procedure against which the claim has been filed.
2. The only grounds for refusing admissibility are that the claim has been submitted after expiry of the deadline.
3. Once the claim has been admitted, suspension of the procedure shall be decided within two days.
4. The Director-General of SAMES, or the entity holding powers delegated by him to authorise the supply procedure against which the claim has been filed, may suspend the procedure for five days, extendable for an equal period of time, in case there are grounds for such decision.

5. The contract may not be awarded, in any procedure, until a final decision has been made on the claim.

Article 53

Decision on the filed claim

1. Once the case has been appraised, the Director-General or the entity holding powers delegated by him to authorise the supply procedure against which the claim has been filed, after hearing the SAMES Board of Directors, should decide whether to accept or reject the claim within twelve days.
2. Decision on the filed claim should consist of a document mentioning the grounds on which it was made and shall be immediately notified to all parties concerned.

Article 54

Hierarchic recourse

1. Competitors who do not accept the decision made on their claim may file a petition of hierarchic recourse to the Health Minister within five days following the date of notification of the decision on their claim.
2. Hierarchic recourse may suspend the procedure for a maximum period of five days.
3. After appraising the case, the Health Minister should decide whether to accept or reject the claim within five days.
4. The decision on the recourse should consist of a document mentioning the grounds on which it was made and should be immediately notified to the concerned parties.
5. Judicial recourse shall produce no suspensive effects.

CHAPTER FIVE

STAGES IN PROCEDURES WITHOUT COMPETITION

Article 55

Request for quotations procedure

1. In request for quotations procedures the invitation, duly signed by the Director-General of SAMES, shall be addressed to at least three suppliers already known by SAMES or selected in advance by way of the pre-qualification procedure, attaching the quotation document which should at least contain:
 - a) The list of drugs, medical consumables, medical equipment, or services and works, specifying their quantity and quality;
 - b) The terms and conditions of the quality guarantee;

- c) A summary of the main terms and general conditions governing the contract to be signed;
 - d) The deadline for submitting the quotations.
- 2. Once the submission deadline has expired, CPAP shall immediately evaluate and compare the quotations so as to choose the lowest bid, basing their evaluation on technical criteria specified in the quotation document.
- 3. The choice made according to the foregoing paragraph should be submitted to ratification by the SAMES Board of Directors.
- 4. The choice and intention to award should be immediately notified to the participants in the request for quotations procedure, making reference to the reasons for the choice.
- 5. Participants in a request for quotations procedure who consider to have been harmed by the choice and intention to award have the right to submit a request for clarification to CPAP, who should respond within three days.
- 6. Requests for clarification shall produce no suspensive effects.
- 7. Participants in request for quotations procedures who are not satisfied with the response of CPAP may file a hierarchic recourse to the Director-General of SAMES, who should respond within three days after hearing the Board of Directors.
- 8. The response of the Director-General shall be final.

Article 56

Contract by direct agreement procedure

- 1. In direct agreement procedures SAMES may address one or more suppliers to meet specific supply requirements.
- 2. The Director-General of SAMES, after verifying the applicability of the special circumstances referred to in Article 12, paragraphs 1 and 2, shall submit to the ratification of the Board of Directors the list of drugs, medical consumables, medical equipment, services and works, as well as detailed information concerning one or more suppliers to be selected.
- 3. The Supply Department, following ratification by the SAMES Board of Directors, shall draft the contract with the selected supplier.

CHAPTER SIX SPECIAL AND FINAL PROVISIONS

Article 57

Statement of ownership

- 1. Any officials of SAMES or the Health Ministry in charge of participating in SAMES supply procedures and operations should present a statement of assets owned and those owned by their spouse, or the person with whom they live de facto.
- 2. The approved model for the assets statement is attached to this decree-law and is a full part of it.

3. The Inspector-General is the competent body for receiving the ownership statements, monitoring and keeping the respective files.

Article 58

Contracting scheme

1. Specific rules on contracting for the supply of goods and services and works execution at SAMES shall be those laid down in Decree-Law no. 12/2005, of November 21, 2005, governing the Legal System on Public Contracting (RCP), with the necessary adaptations.
2. The competent authority within SAMES to sign contracts shall be the Director-General.

Article 59

Scheme governing administrative offences

Specific rules governing administrative offences under this decree-law shall be those stipulated in Decree-Law no 11/2005, of November 21, 2005, on Administrative Offences against the Legal System on Supply and the Legal System on Public Contracting, with the necessary adaptations.

Article 60

Entry into force

This decree-law shall enter into force on the day immediately after its publication.

Approved by the Council of Ministers on the 5 November 2008.

The Prime Minister

(Signature)

Kay Rala Xanana Gusmão

The Health Minister

(Signature)

Nelson Martins

Enacted on the 18 December 2008.

To be published.

The President of the Republic

(Signature)

José Ramos-Horta

ANNEX
Pursuant to Article 57, paragraph 2, of Decree-Law no. / 2008
of the
STATEMENT OF OWNERSHIP

Any SAMES official in charge of participating in supply procedures and operations has the obligation of filling out this statement of ownership. Data holders may access the information that concerns and request to the Dili District Court, in writing, their annual update and correction, if applicable.

1. Identity of the official

Name:

Address:

Registry card:

2. Office

Office held:

Department:

Date of empowerment/appointment/start of contract

3. List of public or private activities, including commercial or entrepreneurial activities and independent professions.

4. List of all functions performed in governing bodies, even though without pay:

5. List of supports or financial or material benefits received for developing the respective activities, namely from foreign entities.

6. List of entities who hired remunerated services of any kind.

7. List of bank accounts and other financial assets.

8. Companies in which the official, directly or via his spouse or children holds a stake higher than 10 percent.

9. I declare that I am not impaired by any incompatibility or impediment established by Law.

Dated:

Signed: