

DECREE No. 2018/366 OF 20 JUNE 2018

**THE PRESIDENT OF THE REPUBLIC,**

Mindful of the Constitution;

Mindful of Law No. 73/7 of 7 December 1973 on the preferential claim of the Treasury to safeguard public funds;

Mindful of Law No. 74/18 of 5 December 1974 concerning vote holders of the State, of local authorities and State undertakings as amended by Law No. 76/4 of 8 July 1976;

Mindful of Law No. 98/013 of 14 July 1998 on competition;

Mindful of Law No. 2004/018 of 22 July 2004 to lay down rules applicable to councils;

Mindful of Law No. 2004/019 of 22 July 2004 to lay down rules applicable to regions;

Mindful of Law No. 2007/006 of 26 December 2007 on the Financial Regime of the State;

Mindful of Law No. 2010/012 of 21 December 2010 relating to cybersecurity and cybercrime in Cameroon;

Mindful of Law No. 2010/013 of 21 December 2010 governing electronic communications in Cameroon;

Mindful of Law No. 2010/021 of 21 December 2010 governing e-commerce in Cameroon;

Mindful of Law No. 2017/010 of 12 July 2017 relating to the General Rules and Regulations governing public administrative establishments;

Mindful of Decree No. 2001/048 of 23 February 2001 relating to the creation, organization and functioning of the Public Contracts Regulatory Agency and its subsequent amendments;

Mindful of Decree No. 2008/376 of 12 November 2008 on the administrative organisation of the Republic of Cameroon;

Mindful of Decree No. 2011/1521/PM of 15 June 2011 to lay down the terms and conditions for the application of Law No. 2010/021 of 21 December 2010 governing e-commerce in Cameroon;

Mindful of Decree No. 2011/408 of 9 December to organise the Government, as amended and supplemented by Decree No. 2018/190 of 2 March 2018,

**HEREBY DECREES AS FOLLOWS:**

**PART I**  
**GENERAL PROVISIONS**

## **CHAPTER 1**

### **SUBJECT, BASIC PRINCIPLES AND SCOPE OF APPLICATION**

**Article 1:** (1) This decree shall institute the Public Contracts Code.

(2) It shall establish the rules applicable to the preparation, award, execution, control and the regulation of public contracts.

**Article 2:** The rules established by this Public Contracts Code shall be based on the principles of freedom of access to public procurement, equal treatment of candidates and transparency of procedures, efficiency and integrity

**Article 3:** (1) The provisions of this Public Contracts Code shall apply to any public contract financed or co-financed by:

- a) the State budget;
- b) external, bilateral or multilateral aid funds;
- c) loans guaranteed by the State;
- d) the budget of a public establishment or a regional or local authority.

(2) The provisions of this Code shall also be applicable to:

- a) contracts awarded by corporate persons governed by private law acting on behalf of the State and its sub-structures;
- b) contracts awarded by persons governed by private law when these contracts benefit from the financial aid or guarantee of the State; or from a corporate person governed by public law;
- c) contracts entered into by corporate persons governed by public law under conditions laid down by this decree;
- d) contracts awarded under a coordination or grouping of orders or by a purchasing agency which acquires supplies and/or services intended for Project Owners or concluded under framework agreements, works, supplies or services contracts.

(3) Special provisions applicable to contracts awarded by Embassies and Consulates shall form the subject of a special instrument by the Authority in charge of Public Contracts.

**Article 4:** (1) Notwithstanding the provisions of article 3 above, this decree shall apply to contracts concluded under international or financing agreements signed by the State with technical and financial partners only in its provisions which are not contrary to the said agreements.

(2) For contracts financed from external, bilateral or multilateral aid, the provisions of the financing agreements shall specify, where appropriate, the applicable rules.

(3) The provisions of this Code shall not apply to:

- a) purchases made by Administrative Purchase Orders whose amounts are less than five (5) million CFA F;
- b) contracts for the acquisition or rental of built or undeveloped immovable property;
- c) the acquisition of finished petroleum products intended solely for the use of administrative vehicles and the acquisition of which is subject to the application of the prevailing price appearing in the schedule of petroleum products published periodically by the competent authorities;
- d) contracts awarded by public undertakings;
- e) special contracts defined in article 71 of this Public Contracts Code;
- f) partnership contracts;
- g) works performed entirely by a public entity.

## **CHAPTER II**

### **DEFINITIONS**

**Article 5:** (1) Within the meaning of this Code, the following definitions shall apply:

- a) **Foreign aid:** Donation or loan from a country or foreign financial institution;
- b) **High Labour Intensive Approach (HLIA):** a works execution approach that optimally combines the use of light equipment with locally available resources in terms of local labour and local materials, whenever it is technically feasible and economically profitable;
- c) **Independent Auditor:** an audit firm of established international reputation recruited by limited call to tender by the organ in charge of the regulation of public contracts for the annual a posteriori audit of public contracts signed during the past year and executed or being executed;
- d) **Authority in charge of Public Contracts:** authority placed at the head of the public entity competent in the public contracts domain;
- e) **Contracting Authority:** natural person authorised to conduct the contracting process and sign the related contracts. They are Project Owners and Delegated project Owners;
- f) **Additional clause:** contractual decision amending or supplementing some clauses of the initial contract to adapt it to events that occurred after its signature;
- g) **Purchase order:** Procedure to acquire goods or services of an amount less than five (5) million CFA F;
- h) **Central Purchasing Agency:** structure governed by public or private law subject to the current provisions and which acquires supplies or services meant for Contracting Authorities;
- i) **Contract Manager:** the natural person accredited by the Project Owner or the Delegated Project Owner for general administrative, financial and technical assistance at the definition, preparation, execution and acceptance stages of the services forming the subject of the contract.  
Responsible for the general management of the execution of the services, he decides on all the technical and financial provisions and represents the Project owner or the Delegated Project Owner in the organs competent to settle disputes;
- j) **Petitions Committee:** body established within the organ in charge of the regulation of public contracts called upon to examine the petitions of bidders

who consider themselves aggrieved and to propose, where necessary, the appropriate measures to the Authority in charge of public contracts;

- k) Follow-up and Technical Acceptance Commission:** a commission constituted of members chosen in relation to their domain of expertise and responsible for the follow-up and validation of the work executed within the scope of contracts for intellectual services whose cost is at least one hundred (100) million CFA F;
- l) Administration's contracting partner or Contract Holder:** any natural or corporate person party to the contract, responsible for the execution of the services provided for in the contract;
- m) Request for Quotation:** simplified procedure for consultation of undertakings for the award of jobbing orders;
- n) Experts:** natural persons accredited by the organ in charge of the regulation of public contracts in view of technical assistance to actors in the domain of public contracts;
- o) Associated Undertakings:** a group of enterprises having subscribed to a single commitment document and represented by one of them, which acts as the common representative. There are two types of associated undertakings: joint and/or several;
- p) Contract Engineer:** the natural or corporate person governed by public law and accredited by the Project Owner or the Delegated Project Owner for the follow-up of the execution of the contract. Responsible for the technical and financial follow-up, he shall assess, decide and give instructions with no financial incidence. He shall report to the Contract Manager;
- q) Jobbing Order:** a public contract whose amount is at least equal to five (5) million or at most fifty (50) million CFA F;
- r) Project Manager:** the natural or corporate person governed by public or private law appointed by the Project Owner or the Delegated Project Owner to defend the latter's interests at the definition, preparation, execution and acceptance stages of the services forming the subject of the contract;
- s) Project Owner:** the head of a ministry or those ranking as such, the head of the executive of a regional or local authority, the Director General and Director of a public establishment, representing the beneficiary of the services provided for in the contract;
- t) Delegated Project Owner:** person acting as a representative of the Project Owner and performing some of the duties of the latter. They include Regional Governors, Senior Divisional Officers, Heads of Cameroon's Diplomatic missions, authorized to conclude and sign contracts financed by credits delegated by a Project Owner and where applicable, the manager of a project benefiting from external funding;
- u) Contract:** all the documents referred to in this Code to which reference is expressly made in the general administrative conditions and special administrative conditions of the contract. It shall be the subject of a single document written on both sides of the paper, subscribed by the holder of the contract and signed by the Contracting Authority;
- v) Supplies contract:** contract entered into with suppliers for the purchase, lease or lease-purchase of products or equipment;
- w) Public contract:** a written document concluded in accordance with the provisions of this Code by which an entrepreneur, supplier or service provider enters into an agreement with the State, a regional or local authority or a public establishment either to carry out work or to supply goods or services at a cost;

- x) Intellectual services contract:** contracts whose subject relates essentially to services of an intellectual nature and whose dominant element is not physically quantifiable or expendable.
- y) Services contract:** contracts concluded with service providers for the provision of immaterial services the dominant element of which is either quantifiable or unquantifiable.
- z) Non-quantifiable services contracts:** service provision contracts concerning, *inter alia*, the delegation of public services, health insurance, advertising, audit of accounts, organization of training seminars, etc.
- aa) Quantifiable services contracts:** service provision contracts relating, *inter alia*, security services, cleaning and maintenance of public buildings, green areas, the maintenance of office or computer equipment, insurance excluding health insurance, etc.:
- bb) Works contracts:** contract concluded with entrepreneurs in view of the accomplishment of operations of construction, reconstruction, demolition, repair, renovation of any building or structure, including preparing the site, excavation works, installation of equipment or materials, decoration and finishing as well as ancillary services to the works if the value of these services does not exceed that of the works themselves.
- cc) Special contracts:** contracts which do not fully or partly fulfil the conditions relating to contracts by invitation to tender or contracts awarded by mutual agreement by dint of their specificity linked for the most part to security.
- dd) Maturation of projects:** process in which a project idea is developed on the basis of appropriate studies, so as to be able to express as accurately as possible, the needs to achieve its realization. It consists in preparing all the elements allowing the taking into account of all the administrative, technical, financial, socio-economic and environmental aspects related to the projects;
- ee) Amount of contract:** the total amount of the expenses and remuneration for services forming the subject of the contract, subject to any addition or reduction which may be done by virtue of the provisions of the said contract;
- ff) Direct execution:** the procedure whereby the Administration decides to carry out the work itself using its own material resources and personnel. The Project Owner is at the same time Project Manager. He deals directly with suppliers and bears all economic and financial risks on his own budget. The management may be total, covering all the work to be performed or partial, concerning only part of the work;
- gg) Submission:** written act by which a candidate for the public procurement makes known his conditions and undertakes to respect the applicable specifications;
- hh) Independent Observer:** consultant recruited by the Administration in view of ensuring the respect of regulations, rules of transparency and principles of equity in the process of the award of public contracts.
- ii) Bid:** all administrative, technical and financial documents constituting the tenderer's proposal;
- jj) Grassroots community organisation:** grouping of local populations in the form of a legalized association or civil society organisation, with a view to working for local development and carrying out High Labour Intensive Works;
- kk) Structure:** construction, installation, building, assembly and in general, material good created or transformed by the execution of works.
- ll) Service provider:** natural or legal person, holder of a public contract.
- mm) Services:** works, supplies, services, forming the subject of a contract.

- nn) Analysis Sub-Committee:** ad-hoc committee appointed by the Tenders Board for the evaluation and classification of bids at the technical and financial levels.
- oo) Contract holder:** any natural or corporate person party to the contract, in charge of performing the services provided for in the contract, as well as his/her representative (s), staff (s), successor (s) and / or representative (s) duly appointed. He is a co-contractor of the administration.

## **PART II**

### **ORGANISATION OF THE PUBLIC CONTRACTS SYSTEM**

#### **CHAPTER I**

#### **PUBLIC CONTRACTS AWARD ORGANS**

##### **SECTION I**

#### **PROJECT OWNERS AND DELEGATED PROJECT OWNERS**

**Article 6:** (1) The preparation of the procedure and award of a public contract shall fall under the authority of the Project Owner, a natural person placed at the head of a Ministry or similar structure, the executive of a Regional and Local Authority or a public establishment, beneficiary of the services provided for in the contract.

In this regard, he shall be responsible for:

- a) carrying out the preliminary studies and in relation with the administrations concerned, ensure the maturation of the projects to be entered in the budget;
  - b) the preparation of the draft contract award execution plan;
  - c) the availability of funding;
  - d) the preparation of consultation files;
  - e) the initiation of consultations;
  - f) the award of contracts;
  - g) the signing and notification of the contracts;
  - h) the termination of public contracts;
  - i) the transmission of periodic reports on the award and execution of contracts to the Ministry in charge of Public Contracts and the body in charge of the regulation of public contracts.
- (2) A person governed by private law receiving financial assistance or a financial guarantee from public resources is also considered as Project Owner within the meaning of this Public Contracts Code.

**Article 7:** (1) The Project Owner may entrust to a Delegated Project Owner, a person governed by public or private law to act in his name and on his behalf, all or part of the following duties:

- a) the definition of the administrative and technical conditions according to which the project concerned shall be executed;
- b) the reception of bids;
- c) the organisation and conduct of the award procedure up to its signature;
- d) the management of contracts awarded in the name and on behalf of the Project Owner;
- e) payments to the contract holders;
- f) the acceptance of the project;
- g) the performance of all actions relating to the above-mentioned duties.

(2) In addition to the Regional or Departmental Delegates of public administrations and public establishments which are beneficiaries of the services, Delegated Project Owners shall be Heads of diplomatic missions of Cameroon abroad, the persons in charge of the Central Purchasing Agency provision for grouped orders and centralised purchases, as well as heads of Project Units of externally funded projects.

(3) The relationship between the Project Owner and the Delegated Project Owner shall be governed by an agreement or any other authorisation which provides, inter alia, the duties entrusted to the Delegated Project Owner, as well as the terms of the technical, financial and accounting control performed by the Project Owner in the various phases of the project, with the exception of Regional or Divisional Delegates of public administrations and public establishments.

(4) The creation, organisation and functioning of Central Purchasing Agencies shall be the subject of a special instrument of the Authority in charge of Public Contracts.

## **SECTION II**

### **INTERNAL STRUCTURES FOR THE ADMINISTRATIVE MANAGEMENT OF PUBLIC CONTRACTS**

**Article 8:** (1) Internal structures for the administrative management of public contracts are placed under the Project Owners and Delegated Project Owners for assistance in the execution of their duties, particularly at the following stages:

- a) the maturation of projects;
- b) the preparation of award plans and their monitoring;

- c) the preparation of draft consultation files in relation with the technical services of the project Owner or the Delegated Project Owner concerned;
- d) the reception of bids;
- e) the finalisation of draft contracts and additional clauses before subscription;
- f) the preparation of the project presentation notes;
- g) the archiving of documents;
- h) the transmission of documents generated during the award and execution of public contracts;
- i) the preparation of the quarterly, semi-annual and annual reports on the award and execution of contracts.

(2) A special instrument shall organise the functioning of the internal structures of the administrative management of public contracts.

**Article 9:** Tenders Boards shall be technical support organs set up under Project Owners and Delegated Project Owners, Regional Governors and Senior Divisional Officers for the award of public contracts worth five (5) million CFA francs and over.

In this regard, they shall:

- a) examine and give a technical opinion on draft tender files as well as the requests for quotation prepared by the Project Owner or Delegated Project Owners;
- b) examine and adopt, if need be, the marking schemes before the opening of bids;
- c) organise the opening of bids;
- d) designate sub-committees for the evaluation of bids;
- e) prepare, if need be, documents to be submitted to the Central Public Contracts Control Boards;
- f) make proposals to the Project Owner or Delegated Project Owner on the award of contracts;
- g) examine and give a technical opinion on draft additional clauses and contracts awarded by mutual agreement.



**Article 10:** (1) Tenders Boards shall be set up by the Authority in charge of Public Contracts and shall include:

- a) Internal Tenders Boards placed under Project Owners;
- b) Regional Tenders Boards placed under Regional Governors for contracts within the remit of contracts awarded with credits delegated to the regional level;
- c) Divisional Tenders Boards placed under Senior Divisional Officers for contracts awarded with credits delegated at the divisional level and for contracts of Regional and Local Authorities which do not have Tenders Boards.

(2) On the proposal of the Project Owner, the Authority in charge of Public Contracts may set up several Tenders Boards under the said Project Owner due to the volume of activities, the type of services and the location of services.

(3) Special Tenders Boards may be set up by the Authority in charge of Public Contracts under certain Project Head, based on the financing conditions and under certain Heads of Cameroon's diplomatic missions.

## **SUB SECTION II** **COMPOSITION OF PUBLIC TENDERS BOARDS**

**Article 11:** Internal Tenders Boards placed under Project Owners shall be composed as follows:

- a) For Project Owners who are Ministers or those ranking as such:
  - One (1) Chairperson appointed by the Authority in charge of Public Contracts;
  - One (1) representative of the Project Owner concerned;
  - One (1) representative of the Ministry in charge of Public Contracts;
  - One (1) representative of the Ministry in charge of public investment;
  - One (1) representative of the Ministry in charge of Finance
  - One (1) Secretary designated by the Project Owner among the staff in the internal contract management structure.
- b) For Project Owners of Regional and Local Authorities :
  - One (1) Chairperson appointed by the Authority in charge of Public Contracts;
  - One (1) representative of the Project Owner concerned;
  - One (1) representative of the Ministry in charge of Public Contracts;
  - One (1) representative of the technical supervisory authority;
  - One (1) representative of the Ministry in charge of Finance;

- One (1) Secretary designated by the Project Owner among the staff in the internal contract management structure.

**Article 12:** (1) Regional Tenders Board shall be composed as follows:

- One (1) Chairperson appointed by the Authority in charge of Public Contracts on the proposal of the Regional Governor;
- One (1) representative of the Ministry in charge of Public Contracts;
- One (1) representative of the Ministry in charge of Finance;
- One (1) representative of the Ministry in charge of public investment;
- One (1) Secretary designated by the Regional Governor.

(2) One (1) representative of the Project Owner for contracts awarded on credits delegated to the regional level shall take part in the sessions of the Tenders Board with a deliberative voice.

**Article 13:** (1) Divisional Tenders Boards shall be composed as follows:

- One (1) Chairperson appointed by the Authority in charge of Public Contracts on the proposal of the Senior Divisional Officer;
- One (1) representative of the Ministry in charge of Public Contracts;
- One (1) representative of the Ministry in charge of Finance;
- One (1) representative of the Ministry in charge of public investments;
- One (1) Secretary designated by the Senior Divisional Officer.

2) One (1) representative of the Project Owner for contracts awarded on credits delegated to the divisional level shall take part in the sessions of the Tenders Board with a deliberative voice.

**Article 14:** The composition and duties of the Special Tenders Boards referred to in article 10 (3) above shall be laid down by the instrument that creates them.

**Article 15:** (1) Chairpersons and members of Tenders Boards shall be chosen among personalities of good moral standing and having a mastery of public contracts.

(2) Chairpersons of Tenders Boards shall be appointed for a two-year mandate renewable once. However, their mandate may be terminated in case of proven breach.

(3) Chairpersons must also be chosen, as far as possible, according to their place of residence.

**Article 16:** (1) The composition of the Internal or of the Special Tenders Board shall be established by decision of the Project Owner or Delegated Project Owner, as the case may be.

(2) The composition of the Regional or of the Divisional Tenders Board shall be established by decision of the Regional Governor or Senior Divisional Officer, as the case may be.

(3) The decision to establish the composition of the Tenders Board shall be forwarded to the Ministry in charge of Public Contracts and to the organ in charge of the regulation of public contracts by the Project Owner, the Delegated project Owner, the Regional Governor or the Senior Divisional Officer concerned.

### **SUB SECTION III**

#### **FUNCTIONING OF TENDERS BOARDS**

**Article 17:** (1) A Tenders Board may validly deliberate only in the presence of its Chairperson, at least two (2) members, the Secretary and the Independent Observer, where need be.

(2) In the case where the Independent Observer does not respond to an invitation duly formulated within the statutory deadlines, the Tenders Board may validly meet.

(3) The decisions of Tenders Boards shall be taken by a simple majority of members present. In case to a tie, the Chairperson has the casting vote.

(4) A quorum shall not be required when a Tenders Board sits to open bids. However, at this stage, the presence of the Chairperson and of the Secretary shall be required.

(5) The file shall be presented to the Tenders Board by a representative of the Project Owner or Delegated Project Owner who has a good knowledge of the project.

(6) During the examination of the analysis report, the file shall be presented by the chairperson of the Analysis Sub-Committee or by a member of the said sub-committee duly mandated by the Chairperson.

**Article 18:** (1) The Tenders Board shall have a maximum period of twenty-one (21) working days from the date of opening of the bids to formulate its proposal for award to the Project Owner or the Delegated Project Owner including the deadlines granted to the Bids Analysis Sub-Committee.

(2) This period may be reduced to ten (10) days in case of urgency, or increased to thirty (30) days for cases where bids are opened in two phases.

(3) The time limits referred to in paragraphs (1) and (2) above shall not take into account the time limits granted to bidders in the event of a request for clarification.

**Article 19:** (1) The Tenders Board shall meet upon being convened by its Chairperson who shall ensure its smooth functioning.

To that end, the Chairperson shall:

- propose an agenda to be adopted during the session;
- set the date, time and venue of each meeting;
- co-sign the minutes of each session with the Secretary;

- prepare quarterly progress reports addressed to the Ministry in charge of Public Contracts and the body in charge of the regulation of public contracts;
- ensure that the Secretary forwards all the documents concerning the files processed to the organ in charge of the regulation of public contracts, for exploitation, conservation and archiving, within seventy-two (72) hours from the end of the Tenders Board deliberations. These include:
  - the attendance sheet;
  - minutes of the sessions;
  - adopted bids-analysis reports;
  - the written report of dissenting members of the analysis reports or summary reports, as the case may be;
  - results of the deliberation on the award proposal by the Bids Analysis Sub-Committee;
  - petitions by bidders and the related responses, where need be;
  - copies of newspapers carrying the tender notices and the possible addenda related to the tender files.

(2) Convening notices and files to be examined by a Tenders Board must reach members and the Independent Observer within a minimum of seventy-two (72) hours prior to the meeting.

(3) The Project Owner or Delegated Project Owner shall forward to the organ in charge of the regulation of public contracts for conservation and archiving, documents under its remit within the following deadlines:

- forty-eight (48) hours for invitations to tender, results of awards, signed contracts and additional clauses;
- seventy-two (72) hours for any other document.

(4) The Chairperson of the Tenders Board shall make available to the organ in charge of the regulation of public contracts a copy of the bids of each bidder initialled by him at the end of each bid-opening session.

(5) The Chairperson of the Tenders Board may invite any person, on account of his expertise with regard to the items on the agenda, to attend meetings of the board in an advisory capacity.

**Article 20:** Under the authority of the Chairperson of the Tenders Board, the Secretary of the Tenders Board shall:

- a) keep a card index of the projects examined by the said Board;
- b) keep minutes of meetings in an unfalsifiable and numbered register, extracts of which shall be regularly forwarded to the organ in charge of the regulation of Public Contracts;
- c) ensure that records of contracts examined by the Board are well kept;
- d) draw up and countersign the minutes of each session.

**Article 21:** (1) The running expenses of Internal Tenders Boards and Special Tenders Boards shall be borne by the budget of the project Owner or Delegated Project Owner.

(2) The running expenses of Regional and Divisional Tenders Boards shall be borne by special heads of the budget of Regions and Divisions concerned.

**Article 22:** (1) Chairpersons, members and Secretaries of Tenders Boards as well as representatives of the Project Owners in the Regional and Divisional Tenders Board shall receive session allowances whose rates shall be fixed by a special instrument of the Authority in charge of public contracts.

(2) The chairperson, members and secretaries of Analysis Sub-Committees shall receive a session allowance whose amount shall be fixed by a special instrument of the Authority in charge of Public Contracts.

(3) The Chairperson of the Tenders Board shall be the delegated authorising officer of the budget of Internal Tenders Boards and Special Tenders Boards. For Internal Tenders Boards, he shall be accredited by the principal authorising officer on the budget lines concerned.

(4) The Regional Governor shall be the delegated authorising officer of the budget of the Regional Tenders Board.

(5) The Senior Divisional Officer shall be delegated authorising officer of the budget of the Divisional Tenders Board.

#### **SUB-SECTION IV**

#### **EXAMINATION OF FILES BY A TENDERS BOARD**

**ARTICLE 23:** Files which are submitted to a Tenders Board for review shall contain:

a) For the examination of the tender file or Request for Quotation:

- an introductory statement by the Project Owner or Delegated Project Owner;
- documents attesting to the availability of funding or the budgetary allocation;
- the tender or request for quotation file itself, prepared on the basis of the model document designed by the organ in charge of the regulation of public contracts and enforced by the Authority in charge of public contracts, comprising the draft invitation to tender, the detailed quantitative schedule of estimates including the quantities to be executed, unit price schedule, special regulations governing the invitation to tender, evaluation criteria and sub-criteria, a model of the draft contract, contract documents, plans and study reports, where applicable.

(b) For the opening of bids;

- an introductory statement by the Project Owner or Delegated Project Owner;

- the approval of the Central Contracts Control Board competent to review the tender file, where applicable;
- the non-objection of the donor regarding the tender file, where applicable;
- a copy of the invitation to tender or any subsequent addendum published in the Public Contracts Journal or where applicable, in other widely-distributed national or international publications;
- the tenders register;
- the tender file available provided to bidders;
- any other relevant document related to the Tender File.

(c) For award proposal

- minutes of the bid-opening session;
- the analysis report, if need be, the summary report signed by the members of the Sub-Committee;
- the bids-analysis report signed by the members of the Bids Analysis Sub-Committee or the members of jury for invitations to tender with design competition;
- the separate note of the member(s) who did not sign the bids-analysis report;
- the minutes of the negotiations where applicable, especially for invitations to tender in two (2) stages.

c) For the examination of a draft contract awarded by mutual agreement:

- an introductory statement by the Project Owner or Delegated Project Owner concerned;
- the authorisation by the Authority in charge of public contracts;
- documents attesting to the availability of the funding or the budgetary allocation;
- the consultation file of the company(ies);
- the bid of the successful tenderer comprising among others, the sub-details of prices, analysis report, where applicable;
- the subscribed draft contract;
- preliminary studies justifying the quantities decided.

d) For the examination of draft contract amendments

- an introductory statement by the Project Owner or Delegated Project Owner;

- a preliminary study justifying the draft contract amendment, if need be;
- the initial contract and, where applicable, the additional clauses already concluded;
- the draft additional clauses subscribed by the Administration's contracting partner;
- documents attesting to the availability of the funding or the budgetary allocation, where applicable.

e) For the examination of draft additional clauses:

- an introductory statement by the Project Owner or Delegated Project Owner;
- a preliminary study justifying the draft additional clauses, if need be;
- the initial contract, where need be, the additional clauses concluded;
- the draft additional clauses subscribed by the Administration's contracting partner;
- documents attesting to the availability of complementary funding or budgetary allocation, where need be.

## **CHAPTER II**

### **CONTROL ORGANS OF PUBLIC CONTRACTS**

#### **SECTION I**

#### **CENTRAL CONTRACTS CONTROL BOARDS**

##### **SUB-SECTION I** **DUTIES**

**ARTICLE 24.-** (1) Central Contracts Control Boards shall be technical bodies attached to the Minister in charge of public contracts. They shall be responsible for the pre-control of public contracts award procedures falling under their jurisdiction and initiated by Project Owners or Delegated Project Owners.

(2) Central Contracts Control Boards may be set up by the Authority in charge of public contracts and attached to Governors of Region, to take into account credit amounts allocated to Delegated Project Owners as well as credits transferred to Regional and Local Authorities or the volume of contracts initiated by the Project Owners or Delegated Project Owners of the Region concerned and falling under the jurisdiction of a Central Control Board.

**ARTICLE 25.-** Project Owners or Delegated Project Owners shall refer matters to Central Control Boards according to the type of contracts. These boards shall give their opinion on:

- a) tender files prepared by the Project Owners or Delegated Project Owners and examined by the Tenders Boards;
- b) the contracts award procedure;
- c) contract award proposals made by Tenders Boards validated by Project Owners or Delegated Project Owners;
- d) draft contracts awarded in accordance with the mutual agreement procedure competence threshold and any draft additional clauses.

**ARTICLE 26.-** (1) Central Contracts Control Boards attached to the Ministry in charge of Public Contracts shall comprise:

- a) the Central Contracts Control Board for road works;
- b) the Central Contracts Control Board for other infrastructure;
- c) the Central Contracts Control Board for buildings and Public amenities;
- d) the Central Contracts Control Board for general procurement;
- e) the Central Contracts Control Board for intellectual and other services.

(2) The instrument relating to the creation of the Central Contracts Control Board attached to a Governor of a Region shall lay down its jurisdiction and composition.



**ARTICLE 27.**- (1) The Central Contracts Control Board for road works shall have jurisdiction over:

- a) road projects (construction, repair and maintenance of roads);
- b) highway and road network projects;
- c) classical civil engineering projects (bridges, box drains, culverts);
- d) ancillary supplies and facilities directly or indirectly related to the said works;
- e) studies and project management services related to the projects mentioned in paragraphs a) and b) above.

(2) It shall examine consultations for which the total amount of lots exceeds or is equal to five (5) billion CFAF as well as contracts awarded by mutual agreements within the same threshold.

**ARTICLE 28.**- (1) The Central Contracts Control Board for other infrastructure shall have jurisdiction over:

- a) special civil engineering projects (airports, ports, viaducts, railway infrastructure, dykes, dams, transport networks and storage facilities, etc.),
- b) hydraulic, electrical distribution and telecommunication projects,
- c) furniture supplies and ancillary facilities directly or indirectly related to the above projects,
- d) studies and project management services related to the projects mentioned in paragraphs a) and b) above.

(2) It shall examine consultations for which the total amount of lots exceeds or is equal to one (1) billion CFA F as well as contracts awarded by mutual agreements within the same threshold.

**ARTICLE 29.**- (1) The Central Contracts Control Board for building works and public amenities shall have jurisdiction over:

- a) building projects (construction or rehabilitation);
- b) construction of public squares, green spaces, sports and leisure fields;
- c) maintenance works;
- d) furniture supplies and ancillary facilities directly or indirectly related to the above projects;
- e) studies and project management services related to the projects mentioned in paragraphs a) and b) above.

(2) It shall examine consultations for which the total amount of lots exceeds or is equal to five hundred (500) million CFA F as well as contracts awarded by mutual agreement within the same threshold.

**ARTICLE 30.**- (1) The Central Contracts Control Board for General procurement shall have jurisdiction over:

- a) office supplies and equipment;
- b) textbooks, school equipment and teaching aids;
- c) consumables, medical and biomedical equipment;
- d) agricultural inputs and raw materials;
- e) electronic and electrical supplies;
- f) supply and maintenance of vehicles and machines;
- g) other supplies that do not fall within the remit of another Contracts Control Board;

(2) It shall examine consultations for which the total amount of lots exceeds or is equal to two hundred and fifty (250) million CFA F as well as contracts awarded by mutual agreement within the same threshold.

**ARTICLE 31.**- (1) The Central Contracts Control Board for Intellectual and other Services shall have jurisdiction over:

- a) studies, audits, consultations, investigations, surveys,
- b) consultancy, institutional reforms, management, engineering services, control, training, financial services, insurance services,
- c) studies and project management services other than those which fall under the jurisdiction of the other boards,
- d) definitions of choice of computer equipment and design of software and software packages;
- e) all other intellectual services.

(2) It shall examine consultations for which the total amount of lots exceeds or is equal to one hundred (100) million CFA F as well as contracts awarded by mutual agreement within the same threshold.

**ARTICLE 32.**- Where the goods or services to be provided under the same invitation to tender are divided into lots, the total estimated cost of all the contracts to be awarded shall be considered to determine the jurisdiction of the Central Contracts Control Board.

## **SUB-SECTION II**

### **COMPOSITION OF THE CENTRAL CONTRACTS CONTROL BOARD:**

**ARTICLE 33.**- (1) Central Contracts Control Boards shall be composed as follows:

- One (1) Chairperson appointed by the Authority in charge of public contracts;
- One (1) representative of the Presidency of the Republic;
- One (1) representative of the Prime Minister's Office;
- One (1) representative of the Ministry in charge of Public Contracts;
- One (1) representative of the Ministry in charge of Finance;
- One (1) representative of the Ministry in charge of Public Investments;
- One (1) representative of the civil society designated on account of his established expertise in the area concerned, appointed by the Minister in charge of Public Contracts;
- One (1) secretary appointed by the Minister in charge of public contracts.

(2) A representative of the Project Owner or Delegated Project Owner shall take part in the working sessions of the Central Contracts Control Board in an advisory capacity.

(3) The Chairperson and members of the Central Contracts Control Boards shall be appointed for a two-year (2) term of office renewable once. However, their functions may be terminated in case of serious breach.

(4) Chairpersons and members of Central Contracts Control Boards shall be chosen from among personalities of good moral standing and who have a mastery of the regulations and procedures for the award of public contracts.

## **SUB-SECTION III**

### **FUNCTIONING OF CONTRACTS CONTROL BOARDS**

**ARTICLE 34.**- (1) The Central Contracts Control Board may only validly deliberate in the presence of its Chairperson, four (4) members including at least a representative of the Ministry in charge of Public Contracts and the Secretary.

(2) Decisions by the Central Contracts Control Board shall be taken by a simple majority of members present. In case of a tie, the Chairperson shall have the casting vote.

**ARTICLE 35.-** (1) For each file under consideration, the Chairperson of the Central Contracts Control Board shall choose an Expert, on account of his expertise in the area concerned with the project, from a list drawn up and regularly updated by the organ in charge of the regulation of public contracts.

(2) The Expert shall examine the technical aspects of the documents received from the Project Owner or Delegated Project Owner and prepare a report to be submitted to the Central Contracts Control Board, within five (5) working days. He shall answer any questions from members of the Central Contracts Control Board but may not, under any circumstances, take part in the deliberations.

**ARTICLE 36.-** The Chairperson of the Central Contracts Control Board shall ensure the proper functioning of the board.

To that end, he shall:

- propose the agenda for adoption by the session;
- fix the date and time of each meeting sign the minutes of each meeting;
- notify the decisions of the said board to Project Owners or Delegated Project Owners;
- forward all documents pertaining to the files examined by the Central Contracts Control Board within a maximum deadline of seventy-two (72) hours from the end of the board's deliberations to the organ in charge of the regulation of public contracts for filing and archiving.

(2) He may invite any person to attend the proceedings of the board on account of his expertise on items featured on the agenda.

(3) He shall be the Authorising Officer of the budget of the Central Contracts Control Board.

(4) The running expenditure of Central Contracts Control Boards shall be entered in a special item in the budget of the Ministry in charge of Public Contracts.

**ARTICLE 37.-** Under the authority of the Chairperson, the Secretary of the Central Contracts Control Board shall:

- a) keep a record of projects examined by the board referred to above;
- b) keep a numbered and unfalsifiable register of minutesb) keep a numbered and unfalsifiable register of minutes of meetings, extracts of which shall be regularly forwarded to the Regulation Authority;
- c) ensure the proper record keeping of contracts examined by the Central Contracts Control Board;
- d) draw up and counter sign minutes of each session.

**ARTICLE 38.**- Chairpersons, members, the secretary and experts of Central Contracts Control Boards shall receive session allowances whose rates shall be fixed by a special instrument of the Authority in charge of public contracts.

**SUB-SECTION IV**  
**COMPOSITION OF FILES SUBMITTED**  
**TO CENTRAL CONTRACTS CONTROL**  
**BOARDS**

**ARTICLE 39.**- Files submitted to the Central Contracts Control Board shall contain the following documents:

- a) For the examination of the tender file:
  - an introductory statement by the Project Owner or Delegated Project Owner attesting to the availability of preliminary studies;
  - documents attesting to the availability of the funding or the budgetary allocation;
  - minutes of the Tenders Board session that adopted the tender file;
  - the report of the Independent Observer relating to the Tenders Board session that adopted the tender file, where applicable;
  - the draft tender file adopted by the Tenders Board.
  
- b) For the award:
  - the tender file provided to bidders;
  - minutes of the bid-opening session;
  - the analysis report and where possible, the summary report, signed by members of the Bids Analysis Sub-Committee;
  - minutes of the Tenders Board session that examined the bids-analysis report;
  - minutes of the negotiations where applicable, especially for invitations to tender in two stages;
  - the contract award proposal;
  - the independent observer's report.
  
- c) For the examination of draft contracts awarded in accordance with the mutual agreement procedure:
  - an introductory statement by the Project Owner or Delegated Project Owner concerned;
  - the authorisation of the Authority in charge of public contracts;
  - documents attesting to the availability of the funding or the budgetary

- allocation;
  - the consultation file of the company(ies);
  - the bid of the successful bidder comprising among others, the sub-details of prices;
  - the analysis report, where applicable;
  - the subscribed draft contract;
  - the Independent Observer's report where applicable.
- d) For the examination of draft additional clauses:
- an introductory statement by the Project Owner or Delegated Project Owner concerned;
  - the technical note of the Project Manager or the Project Engineer;
  - the initial contract and, where applicable, the additional clauses already concluded;
  - the draft additional clauses subscribed by the Administration's contracting partner;
  - minutes of the Tenders Board session that examined the draft;
  - additional clauses, where applicable;
  - the Independent Observer's report, where applicable.

## **SUB-SECTION V**

### **OPINIONS OF THE CENTRAL CONTRACTS CONTROL BOARDS**

**ARTICLE 40.**- (1) The Central Contracts Control Board shall issue one of the following opinions on each file under its jurisdiction:

- a) approval: in such a case, the Project Owner or Delegated Project Owner shall continue with the procedure initiated;
- b) approval with reservations: in such a case, the Project Owner or Delegated Project owner shall rectify the points that gave rise to the reservations before continuing with the procedure initiated.
- c) Disapproval in such a case, the Project Owner or the Delegated Project Owner may not continue with the procedure initiated.

(2) The Board shall express its opinion within a maximum deadline of ten (10) working days from the date it receives a file from the Project Owner or Delegated Project Owner, including the deadline granted to the expert to present his report.

(3) Beyond this deadline, the opinion shall be considered favorable.

(4) The opinions of the Central Contracts Control Board must be justified.

(5) These opinions may be forwarded to any interested bidder who so request.

**ARTICLE 41.**- (1) The Chairperson of the Central Contracts Control Board shall notify the opinion of the Board to the Project Owner or Delegated Project Owner and the organ in charge of the regulation of public contracts as follows:

- within a maximum period of forty-eight (48) hours with effect from the end of deliberations, where the Board expresses no objection to the award;
- within a maximum period of seventy-two (72) hours with effect from the closing date of deliberations, where the Board gives any other opinion.

(2) In case of approval, the Project Owner or Delegated Project Owner, as the case may be, shall publish the invitation to tender or award the contract and notify his decision to the Chairperson of the Board within five (5) days with effect from the date of receipt of the notification of results referred to in paragraph 1 above.

## **SECTION II**

### **INDEPENDENT OBSERVER**

**ARTICLE 42.**- (1) The Independent Observer is a natural or corporate person recruited by invitation to tender launched by the organ in charge of the regulation of public contracts to ensure compliance with the regulation, rules of transparency and principles of equity in the award of public contracts.

(2) He shall attend the sessions of the Tenders Board as well as the sessions of the Bids Analysis Sub-Committee for contracts relating to invitations to tender, the total price of the lots being above or equal to fifty (50) million CFA F to:

- a. assess the process by indicating, at each stage, cases of non-compliance with the regulations, rules of transparency and principles of equity;
- b. indicate practices contrary to good governance in the public contracts award procedure especially influence peddling, conflict of interest and insider information.

(3) The Independent Observer shall receive a copy of all documents relating to files examined by the competent Tenders Board to which he is attached.

(4) He shall forward to the organ in charge of the regulation of public contracts, the Project Owner and the Chairperson of Tenders Board concerned within seventy-two (72) hours of the end of the board's session, a detailed report on the said session and that of the Bids Analysis Sub-Committee, where applicable.

(5) The Chairperson of the Tenders Board and the Project Owner or Delegated Project Owner, as the case may be, may notify the organ in charge of the

regulation of public contracts of their observations within seventy-two (72) hours from the receipt of the Independent Observer's report.

(6) On the basis of reports from the Independent Observer or the organ in charge of regulation, the Authority in charge of public contracts may cancel the award of a contract which was conducted in violation of the regulation or did not comply with the rules of transparency and equity.

### **SECTION III**

#### **ORGANS IN CHARGE OF THE FOLLOW-UP OF THE EXECUTION OF PUBLIC CONTRACTS**

**ARTICLE 43.**- The follow-up of the execution of public contracts shall be carried out by the Project Owner or Delegated Project Owner through the Contract Manager, Contract Engineer and Project Manager, if applicable.

To this end, the Project Owner shall:

- a) appoint the Contract Manager as well as the Contract Engineer and provide them with adequate resources to properly carry out their missions;
- b) sign administrative orders to start the services;
- c) sign administrative orders which have an incidence on costs, deadlines and objectives in accordance with the terms of the General Administrative Conditions;
- d) appoint a representative which shall chair the services acceptance board;
- e) order payments;
- f) terminate contracts after a formal warning, as the case may be,
- g) ensure the drafting of contract execution completion report.

**ARTICLE 44.**- (1) The Contract Manager shall be a natural person accredited by the Project Owner or Delegated Project Owner for general administrative, financial and technical assistance at the definition, preparation, execution and acceptance stages of the services forming the subject of the contract.

(2) Responsible for the general management of the execution of the services, he shall decide on all the technical and financial provisions and represent the Project Owner or Delegated Project Owner in the organs competent to settle disputes.

As such, he shall:



- a) ensure the proper execution of legal, administrative, social and contractual obligations;
- b) draft progress and completion reports concerning the execution of contracts;
- c) authorise payments and follow-up these payments. In this regard, he shall receive related relevant documents from the organs in charge of payment;
- d) convene the acceptance commission or technical acceptance commission;
- e) where necessary, follow up the Project Manager and approve his periodic reports;
- f) forward execution reports and documents to the Project Owner, the Ministry in charge of Public Contracts and the organ in charge of the regulation of contracts;
- g) settle conflicts between the contracting partner and the engineer or Project Manager, as the case may be;
- h) chair periodic meetings for the management of contracts.

(3) He shall report to the Project Owner or Delegated Project Owner.

(4) The Regional and Divisional Delegates of public administrations shall serve as Contract Managers for contracts in which they are Delegated Project Owners.

(5) However, the Regional and Divisional Delegates of public administrations may authorise one of their staff to serve in that capacity on account of their work load and to foster an efficient follow-up of the execution of services.

**ARTICLE 45.-** (1) The Contract Engineer shall be a natural or corporate person governed by public law and accredited by the Project Owner or Delegated Project Owner to follow-up of the execution of the contract.

To that end, he shall:

- a) approve the execution programme and the various amendments proposed by the contracting partner or the Project Manager, as the case may be;
- b) ensure that the project is functional and consistent with the objectives set by the Project Owner or Delegated Project Owner;
- c) ensure the control of the quality of services in the case of the public project management;
- d) check and sign the job cost sheets with the contracting partner;
- e) endorse the detailed accounts of executed services;

- f) supervise operations conducted prior to the acceptance;
- g) coordinate the various actors involved in the project, where applicable;
- h) ensure that the various guarantees are implemented during the execution phase as well as the throughout the project's life cycle.

(2) He shall report to the Contract Manager.

**ARTICLE 46:** (1) The Project Manager shall be a natural or corporate person governed by public or private law appointed by the Project Owner or Delegated Project Owner to ensure the defence of the latter's interests at the definition, preparation, execution and acceptance stages of the services forming the subject of the contract;

(2) He shall be in charge of the permanent management and control of the execution of the services.

In this regard, he shall:

- a) assist the Project Owner in the award of works or supplies contracts, as the case may be;
- b) ensure that the successful bidder complies with the clauses of the works or supplies contracts;
- c) control the quality of the services executed and may carry out the pre-acceptance of sections of built structures;
- d) check the quantities to be mentioned in the job cost sheet and approve payments on account;
- e) chair meetings in the absence of the Contract Manager and Engineer;
- f) draft or ensure that periodic control reports are drafted;
- g) forward the final report of his services to the Project Owner, the Ministry in charge of Public Contracts and the organ in charge of the regulation of public contracts.

(3) He shall carry out his mission under the supervision of the Contract Engineer.

#### **SECTION IV** **ORGAN IN CHARGE OF THE EXTERNAL CONTROL** **OF THE EXECUTION OF PUBLIC CONTRACTS**

**ARTICLE 47.-** (1) The external control of the execution of public contracts shall be

performed by the Ministry in charge of Public Contracts.

In this regard, the Ministry in charge of Public Contracts shall:

- a) conduct unexpected controls to check the effectiveness and quality of services performed and accepted;
- b) ensure, after the signing of the contract, that the latter is consistent with the tender file, the award decision and the bid of the successful bidder;
- c) ensure after the execution of the contracts and based on the copy of all the detailed accounts, that the services invoiced are consistent with the payments made and the services performed,
- d) inform the Contract Manager, Contract Engineer and/or Project Manager, about cases of breaches observed in the execution of contracts;
- e) participate as an observer in the acceptance and technical acceptance of the services;
- f) receive a copy of the provisional payments on account and approve the final payments on account for works contracts or the last invoice for the other types of services;
- g) contribute to furnishing the public contracts data bank;
- h) inform the organ in charge of the regulation of public contracts about any weaknesses of the public contracts actors for which capacity building is needed;
- i) prepare quarterly and annual reports on the general situation of the execution of public contracts.

(2) The Ministry in charge of Public Contracts shall receive from the actors concerned, a copy of all the documentation required for the performance of his missions, namely:

- the tender file made available to bidders;
- the bid of the Administration's contracting partner;
- the award decision;
- signed and notified contracts and additional clauses;
- the schedule for the execution of services;
- administrative orders, including those stipulating the commencement of the services;
- the provisional and final detailed accounts;
- invitations to acceptance and technical acceptance commissions;

- minutes of the acceptance and technical acceptance;
- the reports of the completion of the technical and financial execution of projects;
- control mission reports be they private or public.

### **CHAPTER III**

#### **ORGAN IN CHARGE OF THE REGULATION OF PUBLIC CONTRACTS**

**ARTICLE 48.-** (1) The regulation of the public contracts system shall be ensured by an organ set up to that effect.

(2) The organ in charge of the regulation of public contracts shall be the supervisor and facilitator of the system.

In this regard, it shall:

- a) give its opinions to the Authority in charge of public contracts for the definition and improvement of public contracts policies;
- b) ensure compliance with the principles of good governance, especially through the implementation of preventive measures to fight against malpractices in the public contracts system;
- c) ensure the proper application of rules by all actors through opinions and recommendations;
- d) propose public contracts reforms to the Authority in charge of public contracts;
- e) define public contracts policies and training strategies and develop a professional and institutional framework related thereto;
- f) run, provide input to and monitor the public contracts information system;
- g) periodically evaluate the compliance and performance of the national public contracts award system with respect to the relevant international indicators and standards;
- h) approve public contracts experts;
- i) consider disputes arising from public contracts procedures and formulate technical opinions to the Petition Committee;
- j) propose sanctions against violations of procedures to the Authority in charge of public contracts;
- k) conduct specific audits.

(3) The organ in charge of the regulation of public contracts shall provide a regular assessment of regulation decisions which it shall forward to the Authority in charge of public contracts with copies to the Ministry in charge of Territorial Administration for contracts awarded by Regional and Local Authorities, to Governors for Delegated Project Owners as well as Ministers in charge of the technical supervision for contracts awarded by Public Establishments.

- (4) The duties as well as the terms and conditions for the functioning of the organ in charge of the regulation of public contracts shall be set out in a specific instrument.

## **CHAPTER IV**

### **PETITIONS COMMITTEE**

**ARTICLE 49:** (1) A Committee attached to the organ in charge of the regulation of public contracts shall be set up to examine petitions from bidders who consider themselves aggrieved and make proposals for appropriate measures to the Authority in charge of public contracts.

(2) The organisation, composition and functioning of the Petitions Committee shall be laid down in a special instrument by the Authority in charge of public contracts.

(3) Units within the Petition Committee may be created at the level of Regions.

## **CHAPTER V**

### **THE AUTHORITY IN CHARGE OF PUBLIC CONTRACTS**

**ARTICLE 50:** (1) The Authority in charge of public contracts shall be the Minister in charge of public contracts. He shall organise and ensure the proper functioning of the public contracts system.

As such, he shall:

- sign enabling instruments for the implementation of the Public Contracts Code;
- pronounce sanctions against perpetrators of malpractices and hear disputes arising from public contracts as well as disagreements among public agents;
- have power to authorise exceptional procedures.

(2) The Authority in charge of public contracts may, if need arises, hear cases on his own initiatives to sanction a procedure.

## **PART III**

### **THE AWARD OF PUBLIC CONTRACTS**

#### **CHAPTER I**

##### **GENERAL PROVISIONS**

#### **SECTION I**

#### **BIDDERS**

**ARTICLE 51:** (1) Bidders are natural or corporate persons who submit bids for a public procurement.

- 1) Shall not be admitted to tender for a public procurement and subject to the provisions of article 52 of this Public Contracts Code, candidates who:
  - a) are winding up or are bankrupt;
  - b) are subject of one of the exclusion orders or forfeitures provided for by the national and international laws and regulations in force;
  - c) have not subscribed to the declarations provided for by the laws and regulations in force.

**ARTICLE 52:** (1) Corporate persons governed by public law shall be permitted to tender for a public procurement provided they can establish that:

- a) they have a legal personality and financial autonomy;
  - b) they are managed in accordance with private accounting rules and;
  - c) they are not under the supervision of the Project Owner or Delegated Project Owner concerned, except with express authorisation of the Authority in charge of Public Contract.
- 2) Civil Society Organisations and Public Establishments who wish to tender for a public procurement shall be governed by the provisions of this Public Contracts Code. However, they shall be admitted to bid on condition that they propose competitive prices. These prices must have been set by taking into account all direct and indirect costs which determine the price of the service under the contract.
- 3) In these cases, the Public Establishments shall demonstrate that in the price-setting process, they did not benefit from advantages resulting from the resources which are allocated to them as part of their public service duties.
- 4) The Special Regulations governing Invitations to Tender or consultations shall, in accordance with the regulations in force, define the conditions under which the actors referred to in this article shall participate in a given consultation, whether by invitation to tender or following the mutual agreement procedure.

## **SECTION II**

### **CATEGORISATION OF COMPANIES**

**ARTICLE 53:** (1) The Project Owner or Delegated Project Owner may reserve access to some construction contracts to companies in the buildings and public works sector of a certain category.

(2) The terms and conditions for the categorisation of companies in the buildings and public works sector shall be laid down by a special instrument by the Authority in charge of public contracts.

## **CHAPTER II** **PREREQUISITES TO THE AWARD OF PUBLIC CONTRACTS**

### **SECTION I** **IDENTIFICATION OF NEEDS**

**ARTICLE 54:** (1) Prior to the launching of any invitation to tender or any consultation, the Project Owner shall conduct a study to determine as accurately as possible, the nature and scope of the needs to be satisfied.

(2) The Project Owner who does not have the relevant expertise to conduct the study referred to under paragraph (1) of this article may resort to external expertise.

### **SECTION II** **PRELIMINARY STUDIES**

#### **SUB-SECTION I** **CONTENT OF PRELIMINARY STUDIES**

**ARTICLE 55.-** (1) The preliminary studies referred to under article 54 above shall define the specifications and scope of the services under the contract and either lead to a draft proposal which defines all the characteristics of the structure to be constructed or supplies to be delivered, or the terms of reference for the services concerned.

(2) Preliminary studies shall be mandatory and shall take into account, especially:

- a) the destruction of property, bare ownership, displacement of networks (water, electricity, telephone, etc.), clearance of the adopted site, compensation of the evicted persons and accessibility conditions for construction contracts;
- b) the disability factor for infrastructure projects;
- c) the promotion of employment through the use of local resources such as the workforce, equipment and local material based on the technical High Labour Intensive Approach (HLIA), in accordance with the regulation in force;
- d) compliance with safety standards, especially those relating to public buildings;
- e) compliance with environmental standards;
- f) the project size and divisions to bring out the services which may be executed by national Small and Medium-sized Enterprises and grassroots

community organisations, on the one hand, and those which may be sub-contracted to national undertakings on the other hand.

- (3) For contracts relating to the maintenance and/or rehabilitation of roads, engineering structures, repair of buildings or equipment, the preliminary studies shall comprise degradation surveys and indicate the level of service required.
- (4) For new works and the acquisition of new equipment, these studies shall end with a Detailed Draft Proposal for roads and acquisitions and a Draft Proposal for the Execution of Structures for buildings and other infrastructure.
- (5) For intellectual services, the terms of reference shall indicate the context, scope of the services, objectives and expected outcomes, specific skills and the qualification of the experts to be mobilised, execution schedule and estimated cost of the services.
- (6) For supply contracts, the studies shall indicate the detailed functional or performance characteristics of the property or equipment to be acquired, the applicable standards and delivery constraints for the preparation of delivery schedules.

## **SUB-SECTION II** **APPLICABLE STANDARDS**

**ARTICLE 56.**- (1) Works, supplies and services which form the subject of a public contract shall be defined based on standards, technical authorisations or specifications which shall expressly be mentioned in the contract documents.

- (2) Reference to brand names or exclusive specifications from particular supplies or service providers shall be forbidden.
- (3) However, such a reference may be followed by “or equivalent” when the Project Owners cannot provide a description of the subject of the contract using sufficiently accurate and comprehensible specifications to interested bidders.

## **SUB-SECTION III** **SOCIAL AND ENVIRONMENTAL** **CONDITIONS**

**ARTICLE 57.**- (1) The conditions for the execution of public contracts shall take into account social, economic and environmental considerations that promote local manpower, decent employment and when needed, likely to meet sustainable development objectives.

These considerations shall relate to:

- a) the integration of environmental protection standards in the award and execution processes;



- b) the inclusion of contract clauses which require compliance with labour standards ratified by Cameroon;
- c) the institution of an appropriate inspection system during the execution of the contract to check compliance with labour conditions;
- d) the protection of monuments, cultural sites and social values.

(2) The execution conditions mentioned in the consultation documents shall whenever possible give preference to the use of the High Labour Intensive Approach (HLIA) pursuant to the regulation in force and in accordance with the execution methods which must be specified in the Special Technical Specifications.

#### **SUB-SECTION IV**

##### **ALLOTMENT**

**ARTICLE 58:** (1) When the division of services has technical, financial or organisational advantages, the works, supplies or services shall be divided in lots of the same nature or according to their location.

(2) The consultation regulation shall set the number, nature and scope of the lots as well as the conditions imposed on bidders, required technical and financial capacities and the terms and conditions of their award.

(3) Under no circumstances shall the allotment, in relation to the total cost of the project, be exempted from control.

(4) In the event of an allotment, each lot shall constitute a separate contract.

#### **SECTION IV**

##### **PROGRAMMING OF PUBLIC CONTRACTS**

**ARTICLE 59:** (1) The award and execution of public contracts shall be subject to a schedule defined by the Project Owners and Delegated Project Owners in collaboration with the Ministry in charge of Public Contracts.

- (2) For Public Administrations, the draft programming journal including externally financed contracts prepared based on a model designed by the organ in charge of the regulation of public contracts, as well as the simplified contracts award plan, shall be presented during the budget preparation conference.
- (3) For the other administrations, the adoption of budgets by the competent organs shall be subject to the presentation of a draft programming journal which includes externally financed contracts.
- (4) Within a period of ten (10) working days from the date of the adoption of his budget, each Project Owner shall forward a copy of the final programming journal to the Ministry in charge of Public Contracts, the organ in charge of the regulation of public contracts and the competent Tenders Boards.
- (5) The programming journals shall be regularly updated by the Project Owners and Delegated Project Owners in collaboration with the Ministry in charge of Public Contracts.

## **SECTION V**

### **AVAILABILITY OF THE SITE AND FINANCING**

**ARTICLE 60:** (1) The Project Owner or Delegated Project Owner shall take all the measures required to ensure the availability of the site where the services shall be executed before the notification of the contract concerned. He shall justify, where applicable, the actual existence of the public utility declaration, expropriation decree, deed of allocation or any other legal or administrative instrument justifying the availability of the site.

- (2) The Project Owner or the Delegated Project Owner shall be bound to ensure the mobilisation and availability of financing before launching the consultation. The aim shall be to demonstrate, as the case might be, the budgetary allocation, the effectiveness of the expenditure authorisation and entry into force of the financing agreement.
- (3) For recurring services or projects for which the effective commencement date of the service is not compatible with the prior adoption of the budget for the corresponding financial year, the consultations related thereto may be launched before the adoption of the said budget.
- (4) In the cases referred to under paragraph (3) above, the notification of the contract shall be subject to the existence of the proof of financing and availability of the site, where applicable.

**CHAPTER III**  
**TPOLOGY OF PUBLIC CONTRACTS.**

**SECTION I**  
**WORKS CONTRACTS**

**ARTICLE 61:** Works Contracts for are contracts for the construction, reconstruction, demolition, repair, renovation of any building, road or structure, including the preparation of the construction site, excavation, installation of equipment or materials, decoration and completion, as well as ancillary services to the works, if the value of these services does not exceed the said works.

## **SECTION II**

### **SUPPLIES CONTRACTS**

**ARTICLE 62:** Supplies contracts are contracts for the purchase, lease and hire-purchase of products or material including services and accessories, if the value of the latter does not exceed that of the said goods.

## **SECTION III**

### **QUANTIFIABLE SERVICE CONTRACTS**

**ARTICLE 63:** (1) Service contracts are contracts for which services do not necessarily need a design. They are characterised by a physically measurable outcome.

(2) They shall include, security service, cleaning or maintenance of public buildings or green spaces, maintenance of office or computer equipment, insurance, excluding health insurance.

## **SECTION IV**

### **NON-QUANTIFIABLE SERVICES AND INTELLECTUAL SERVICES CONTRACTS**

- (1) Non-quantifiable services are contracts for which the services are mainly intellectual.
- (2) Inter alia, they shall include health insurance, advertising, organising training seminars and intellectual services including, project management, audits, studies, monitoring, and specific obligations related to the notion of intellectual property.

## **SECTION V**

### **OTHER TYPES OF CONTRACTS**

## **SUB-SECTION I**

### **DESIGN AND EXECUTION CONTRACTS**

**ARTICLE 64:** A design and execution contract is a works contract which enables the Project Owner to entrust to a group of business operators or for single infrastructure works, to a single business operator, a mission which concerns both the conduct of studies and the execution of works.

## **SUB-SECTION II**

### **FRAMEWORK AGREEMENTS**

**ARTICLE 65:** (1) When the Project Owner cannot determine in advance the volume and the rhythm of orders for usual supplies or services necessary to meet his needs, he may resort to a framework agreement.

(2) Framework agreements are concluded by one or more Project Owners and with one or more providers, and designed to establish rules pertaining to the purchase orders to be issued, or the provisions governing subsequent purchase contracts to be awarded during a given period, particularly concerning prices and the proposed amounts, where necessary.

(3) The duration of framework agreements shall not exceed three (3) years.

(4) In the case where the framework agreement is signed for a period above twelve (12) months and if it expressly provided for therein, each contracting party may seek, at their chosen dates, the revision of prices by applying the specified price revision formula or withdraw from the contract if the application of the price formula may cause a unit price variation of more than 25%.

(5) The use of framework agreement shall only be applicable to usual supplies or services and to maintenance and renovation works.

**ARTICLE 66:** (1) Where the framework agreement determines the minimum and maximum supply or services, fixed in terms of value and quantity, which could be ordered in a given period not exceeding that of the use of payment appropriations, with specified quantities of supply or services to be executed, the execution shall be done alongside the issuance of the purchase orders.

(2) Orders are written documents addressed to the holder of the framework agreement. They shall specify the services described in the framework agreement under which the execution is requested and determine the quantity.

**ARTICLE 67:** (1) When the orders concern a given category of services or supplies, without indicating the quantity or overall value of orders, the framework agreement shall give right to subsequent orders contracts.

(2) Subsequent orders contracts shall specify the features and terms of execution of requested services which were not determined in the framework agreement. They shall not lead to

substantial amendments in the provisions of the framework agreement.

### **SUB-SECTION III**

#### **PLURIANNUAL AND PHASE CONTRACTS**

**ARTICLE 68:** (1) When all of the necessary funding for a project cannot be mobilised in a single financial year and the services may be spread over several years or executed in several phases including a firm phase and one or several conditional phases, the Project Owner must programme expenditures related to each financial year.

(2) Contracts referred to in paragraph 1 above must be the subject of a single tender and indicate the period for which they are concluded.

**ARTICLE 69:** (1) Pluriannual contracts containing a firm annual phase and conditional annual phases must determine the nature, price and terms of execution of services of each phase.

(2) Services of each phase must form a coherent whole that takes into account the services of earlier phases where they exist.

(3) Contracts including a firm phase and one or more conditional phases may include a denunciation clause with notice in favour of either party.

(4) The execution of each conditional phase shall be subject to a service order from the Project Owner or Delegated Project owner, notified to the contracting partner under the conditions stipulated in the contract.

### **SUB-SECTION IV**

#### **RESERVED CONTRACTS**

**ARTICLE 70:** (1) Some contracts may be set aside for craftsmen, national Small and Medium-sized Enterprises, community-based organisations and civil society organisations.

(2) The nature and thresholds of contracts referred to in paragraph (1) above, as well as the terms and conditions of their application shall be laid down by a special instrument by the Authority in charge of public contracts.

### **SUB-SECTION V**

#### **SPECIAL CONTRACTS**

**ARTICLE 71:** (1) Special contracts are contracts, which do not fully or partly fulfil the provisions relating to contracts by invitation to tender or contracts awarded by mutual

agreement. They include, for the most part, contracts relating to national defence, security and strategic interests of the State.

(2) Contracts referred to in paragraph 1 above shall include secret clauses for reasons of security and the strategic interests of the State and shall therefore not be subject to examination by any public tenders board provided for by this Public Contracts Code.

(3) Special contracts shall concern the purchase of equipment, supplies or services directly related to national defence, to security and contracts where the strategic interests of the State are involved.

(4) Special contracts shall be awarded after prior authorisation from the President of the Republic.

**CHAPTER IV**  
**PROCEDURES FOR THE AWARD OF PUBLIC CONTRACTS**

**SECTION I**  
**CONTRACTS AWARDED BY INVITATIONS TO TENDER**

**SUB-SECTION I**  
**GENERAL PROVISIONS**

**ARTICLE 72:** (1) Public contracts shall be awarded by invitation to tender after competition between potential Administration contracting partners.

(2) Exceptionally, they may be awarded through a mutual agreement procedure in compliance with the conditions provided for in this Public Contracts Code.

(3) Public contracts shall be subject to the tax and customs system in force in Cameroon, unless by special waivers provided for by the laws and regulations and subject to provisions of external funding agreements or international conventions and agreements.

**ARTICLE 73:** (1) An invitation to tender is the procedure by which a contract is awarded after public invitation to compete.

(2) The selection criteria shall be based on:

- a) the quality and professional capacity of the bidders;
- b) the price of goods and services and possible variants proposed or the cost of their use;
- c) the execution or delivery deadline;
- d) the technical and functional value of services especially the operating and maintenance conditions as well as the potential life span of the works executed or the supplies and services concerned.

**SUB-SECTION II**  
**TYPES OF INVITATIONS TO TENDER**

**ARTICLE 74:** (1) An invitation to tender may be:

- a) national, when it is addressed to natural or corporate persons whose location or head office is in Cameroon;
- b) international, when it concerns natural or corporate persons whose location or head office is in or out of the national territory.



(2) Each of the above types of tenders may be open, restricted, through design competition or in two (2) phases.

#### **Paragraph 1**

#### **Open invitation to tender**

**ARTICLE 75:** (1) An invitation to tender is said to be open when the public notice invites all interested candidates to submit their bids at a given date.

(2) After publication of the notice, the tender file is put at the disposal of each candidate at their request.

#### **Paragraph 2**

#### **Restricted invitation to tender**

**ARTICLE 76:** (1) A restricted invitation to tender is an invitation to tender preceded by a pre-qualification.

(2) The pre-qualification shall take place following a public call for candidature through publication in authorised newspapers, of a notice relating to a special invitation to tender or a set of invitations to tender over a period below six (6) months in the same financial year, for services of the same nature.

(3) The public call for candidature must specify the qualification criteria, such as the administrative conditions which shall justify the legal existence of the candidate and references in the field concerned.

(4) The restricted invitation to tender shall be limited to a minimum of three (3) candidates selected after the pre-qualification procedure. Otherwise, the Project Owner or the Delegated Project Owner must resort to an open invitation to tender.

(5) In case of allotment, the minimum number of pre-qualified candidates per lot shall be set at three (3). Otherwise, the Project owner or the Delegated Project Owner must resort to an open invitation to tender for lots concerned.

(6) When the pre-qualification concerns a set of tenders spread over the period referred to in paragraph (2) above, the public call for candidatures should limit the number or the overall volume of the contracts which could be awarded to a candidate based on his capacity.

(7) The pre-qualification process conducted by the Project Owner or the Delegated Project Owner shall lead to the establishment of a short list published prior to the launching of the consultation.

(8) Approved tender files shall be put at the disposal of pre-qualified candidates under the same conditions laid down in article 75 of this Public Contracts Code and letters of invitation to tender addressed to them.

**ARTICLE 77:** (1) The time limits for submission of bids, as from the date of publication of the call for expression of interest shall be:

- at least fifteen (15) and at most twenty-one (21) working days for national invitations to tender;
- at least twenty-one (21) and at most thirty (30) working days for international invitations to tender.

(2) The time limits prescribed in paragraph (1) above shall be reduced to ten (10) and fifteen (15) working days respectively in case of urgency.

**ARTICLE 78:** (1) The restricted invitation to tender procedure shall be compulsory for intellectual services contracts.

(2) The restricted invitation to tender may be used in the following cases:

- a) major works or equipment of specific or complex nature;
- b) supplies of equipment to be manufactured on order and specialised services.

(3) The Project Owner or Delegated Project Owner may be exempted from pre-qualification:

- for intellectual services under jobbing orders;
- when the pre-qualification has been unsuccessful or resulted in less than three (3) candidates per lot;
- when the contract award schedule prepared in accordance with the regulations in force shows that delays in procedures do not permit to respect the projected deadlines for the start or completion of services;
- when the tender concerns service providers selected within the context of categorisation.

### **Paragraph 3**

#### **Invitation to tender with design competition**

**ARTICLE 79:** When technical, aesthetic or financial reasons justify special studies, the invitation to tender may be accompanied by a design competition.

**ARTICLE 80:** (1) The design competition shall either concern:

- a) the design of a project;
- b) the design of a project and the conduct of the study related thereto;
- c) the design of a project, conduct of the study related thereto and the

follow-up and control of its realisation;

d) or the design and execution of a project when it concerns a design-execution contract provided for in article 64 above.

(2) Services which may be subject to competition shall include architectural projects, works of art, land use and urban planning and services which are the subject of design and execution contracts.

(3) The competition shall be done on the basis of a programme prepared by the Project Owner which indicates the needs to be met by the service and sets if necessary, the maximum expenditure planned for the execution of the project.

(4) The projects are examined by a jury whose members possess all the artistic and technical skills necessary to assess the project submitted for the contest under the best conditions.

(5) The composition of the jury referred to in paragraph (4) above shall be fixed by the regulations of the invitation to tender.

(6) The invitation to tender with design competition shall follow the same procedure as the open invitation to tender.

**ARTICLE 81:** (1) When the invitation to tender with design competition is launched for the design of a project, prizes, awards or benefits shall be granted to the best and satisfactory projects.

(2) The special regulation of the invitation to tender with design competition shall provide that:

- a) either the prize-winning projects becomes the full or partial property of the Project Owner;
- b) or the Project Owner reserves the right to execute all or part of the prize-winning projects, subject to the payment of a compensation fee fixed in the special regulations of the invitation to tender.

(3) The assessment criteria of the competition must focus on the quality of the project and not the references of the designer and take into account the estimated cost of the project.

(4) The special regulations of invitations to tender with design competition shall, in addition, indicate under what conditions designers of works of art, shall be called upon to cooperate in the execution of their prize-winning project.

**ARTICLE 82:** Where the tender with design competition concerns both the design of a project, conduct of the study related thereto and the monitoring and control of its execution, or on the design and execution of a project, the evaluation criteria shall take into account the quality of the project and its estimated cost, the references of the bidders and the cost of the subsequent study, as the case may be.

## **Paragraph 4**

### **Invitation to tender in two stages**

**ARTICLE 83:** (1) The Project Owner may launch the invitation to tender in two stages in case his choice is made based on criteria such as performance, operating constraints and economic cost instead of simple detailed technical specifications, and in case he may justify his inability:

- to determine the means to satisfy his needs;
- to assess the available technical or financial solutions.

(2) The use of the invitation to tender in two (2) stages shall be subject to the prior approval of the Minister in charge of Public Contracts during programming.

**ARTICLE 84:** The two-stage contract award procedure shall be scheduled as follows:

a) In the first stage:

- The Project Owner or Delegated Project Owner shall launch through public call for candidatures, invitations for proposals relating to the technical, qualitative or other characteristics of the project on the basis of general design principles or performance standards defined in the tender file and subject to subsequent technical and/or commercial adjustments.
- Bidders must in any case provide the requested information to justify their qualifications.
- During this first stage, the Project Owner or Delegated Project Owner may initiate any discussion with bidders on his programme.
- Bidders shall offer no price during this first stage.
- The Project Owner or Delegated Project Owner shall forward minutes of the discussion to the competent tender boards in accordance with the provisions of this Code relating to negotiations.

b) During the second stage:

- Candidates shall be invited to submit final technical proposals alongside prices, based on the call for competition file established or revised by the Project Owner or Delegated Project Owner, based on information collected at the first stage.

- The bidder who does not wish to submit a final tender may withdraw from the procedure. In this case, the Project Owner or the Delegated Project Owner is required to release his bid bond.
- The Project Owner or Delegated Project Owner may provide lump sum remuneration for candidates submitting the best proposals according to the terms defined in the tender file.

### **SUB-SECTION III**

### **CONTENT OF A TENDER FILE**

#### **Paragraph 1**

#### **Constituent elements of a Tender File**

**ARTICLE 85:** (1) The tender file, developed according to the model designed by the organ in charge of the regulation of Public Contracts and put into force by the Authority in charge of Public Contracts, shall include:

- a) the tender notice drafted in French and English;
- b) the general regulation of the tender;
- c) the special regulations of the invitation to tender notably including the criteria, sub-criteria or evaluation scales of tenders and the minimum qualification criteria of bidders;
- d) the Special Administrative Conditions;
- e) the Special Technical Conditions for works contracts;
- f) terms of reference for intellectual services contracts;
- g) technical specifications for supplies contracts;
- h) the unit price schedule; where necessary;
- i) the schedule of detailed estimates including the quantities to be executed or the schedule of estimates where for some studies contracts the quantities must be provided by the bidder based on the methodology of work envisaged;
- j) the price sub-detail or breakdown schedule where necessary;
- k) model forms relating to bid, bonds and to supplies and their origin, where necessary;
- l) if applicable, technical documents or any other document

deemed necessary by the Project Owner.

(2) Within the framework of international consultations, the tender file must indicate the nature and scope of services to provide, the applicable tax regime, indicative list of taxes, duties and taxes as well as the operating mode of implementation and clearance.

## **Paragraph 2**

### **The Tender notice**

**ARTICLE 86:** The tender notice must mention:

- a) the reference of the invitation to tender including the number, the type of invitation to tender, identification of the Tenders Board and the competent public contracts control board where necessary, the Project Owner or Delegated Project Owner, the financial year, the subject and date of signature;
- b) financing;
- c) the budgeted amount;
- d) the type of invitation to tender;
- e) the place(s) where the tender file may be consulted;
- f) the conditions for the acquisition of the tender file;
- g) the criteria for the rejection of tenders;
- h) the main criteria for the qualification of bidders and evaluation of bids;
- i) the place, date and deadlines for the submission and opening of bids;
- j) the time-limit during which tenderers shall be bound to stay committed by their bids;
- k) the conditions which the bids must fulfil, especially the amount of the bid bond;
- l) in case of division into lots, specify the maximum number of lots that could be awarded to a bidder.

## **Paragraph 3**

### **Special Regulations of the Invitation to Tender:**

**ARTICLE 87-** (1) The special regulations of the invitation to tender must specify, *inter alia*:

- a) the presentation and constitution of bids;
- b) the criteria for admissibility or rejection of bids;
- c) the evaluation and qualification criteria;
- d) the method by which the public contract shall be awarded;
- e) the terms of implementation of national preference, where necessary.

(2) For works, supplies and quantifiable services contracts, the qualification criteria shall be binary. They must, as much as possible, be objective, verifiable and quantifiable.

(3) For non-quantifiable services, including intellectual services contracts, the evaluation criteria of bids shall be based on the points and detailed with sub-criteria. The sub-criteria must be objective, verifiable and qualitative as much as possible.

#### **SUB-SECTION IV**

#### **PUBLICITY AND DEADLINE FOR SUBMISSION OF BIDS**

**ARTICLE 88:** (1) The tender notice shall be published in the Public Contracts Journal by the organ in charge of the regulation of public contracts which shall have a time limit of twenty-four (24) hours upon receipt to publish it.

(2) Publications in other major newspapers and other means of publicity such as radio announcements, newspapers available in news-stands and specialised newspapers, notice boards and electronic means may only be used additionally.

(3) The Chairperson of the tenders board concerned shall receive a copy of the tender notice from the Project Owner or Delegated Project Owner within a time limit of seventy two days (72) from its signature.

**ARTICLE 89:** (1) The time limits granted to bidders for the submission of bids shall range between twenty five (25) and fifty (50) working days from the date of publication of the tender notice in the Public Contracts of the organ in charge of the regulation of public contracts Journal.

(2) This time limit which shall run from the date of publication of the tender notice may be reduced to twenty (20) days for small scale services, in the case of exigency or of a request for quotation and extended to a maximum of ninety (90) days for international invitations to tender or for complex or large scale projects.

#### **SUB-SECTION V**

#### **BIDS**

**ARTICLE 90:** (1) Subject to provisions of articles 51 and 52 of this Code, any bidder shall be required to produce the following documents in his bid:

- documents providing information on the bidder's identification, location and proof of activity;
- a copy of the decision granting the power to commit the company;
- an attestation of solvency issued by a competent authority;
- a Certificate of Non-Exclusion delivered by the organ in charge of the regulation of Public Contracts attesting that the bidder is not subject to an exclusion order or forfeiture provided for by the regulation in force;
- a bid bond whose conditions and amounts shall be indicated in the tender file in accordance with the regulations in force, where necessary;
- a clearance certificate from the competent authorities regarding the payment of taxes, duties, contributions, fees or deductions of whatever nature;
- the social clearance issued by the administration in charge of social welfare;
- The categorisation certificate, if necessary.

(2) For bidders established outside the national territory, the special rules of the invitation to tender shall specify the documents which are not required and those that they must provide.

(3) The expiry date of the above-listed documents must be subsequent to the launch of the consultation.

(4) The validity of the bid bonds must overrun by thirty (30) days that of the bids. They shall be returned as soon as the award results are available except for successful bids, which must be replaced by the final bond, if necessary.

(5) The bid bond may be replaced by a guarantee issued in accordance with the provisions of article 141 (1) and (2) of this Code.

(6) Any establishment having produced personal and several guarantees shall comply, *mutatis mutandis*, with the provisions of article 141 (4) and (5) of this Code.

(7) Small and Medium-sized Enterprises with national capital and leaders, as well as civil society organisations may produce, instead of a bid bond either a certified cheque, a bank cheque, or a legal mortgage, a security from a banking institution or financial organisation approved in accordance with the legislation in force.

(8) The bid bond issued by an international financial institution shall be acceptable,



provided that this organisation appoints formally a correspondent approved by the Minister in charge of Finance who shall vouch in case of appeal.

(9) For services under jobbing orders, certified cheques and bank-cheques may replace the bid bond.

## **SUB-SECTION V**

### **ADMISSIBILITY AND OPENING OF BIDS**

**ARTICLE 91:** (1) The administrative documents, the technical and financial offers must be put in different sealed envelopes before submission.

(2) The envelopes mentioned in paragraph (1) above, with the number and the subject of the tender, shall be sent to the Project Owner. No indication on the identity of the bidder should be given.

(3) The envelopes containing the tenders shall be submitted against acknowledgement of receipt at the place indicated in the tender notice.

(4) Upon receipt, the envelopes shall be given a number, indicating the date and time of submission entered by order of arrival in a special register issued by the organ in charge of the regulation of public contracts. These envelopes shall remain sealed until the time provided for their opening.

(5) The start of the bids-opening session shall not be later than one (1) hour following the deadline for the receipt of bids indicated in the tender file.

(6) Tenders arriving after the deadlines for submission shall be inadmissible.

**ARTICLE 92:** (1) The Chairperson of the Tenders Board shall ensure that the envelopes are closed and sealed. He shall proceed to their opening, summarily check administrative documents produced by the bidders and initial the originals of bids and administrative documents.

(2) He shall read or order the reading of administrative documents and main components of the bids, deadlines and the amount of the financial bid and the discounts, if necessary.

(3) Participation in the opening of the bids shall be restricted to representatives of the bidders and the number of representatives per bidder shall be limited to one (1), even in the case of joint bidding.

(4) Minutes of the opening of bids shall be established forthwith. The minutes of this opening of bids shall mention the admissibility of bids, their administrative regularity, their prices, their discounts and deadlines. A copy of the extract of such minutes to which shall

be attached the attendance sheet signed by all participants shall be given to each bidder on request.

(5) The minutes of the bids opening session of the Tenders board shall indicate if necessary, the composition of the Analysis Sub-Committee. However, information about its composition shall remain internal to the board.

(6) The Chairperson of the Tenders board shall ensure the conservation of the original of all the bids received.

(7) The Chairperson of the competent Tenders Board shall certify a copy of the bids from bidders which shall be provided to the organ in charge of the regulation of public contracts at the end of the session.

(8) For bids opened in two-phases, a sealed sample financial package shall be transmitted to the organ in charge of the regulation of public contracts for conservation.

(9) In case of absence or non-conformity of an administrative document during the opening of the bids, the bidders concerned shall have a deadline of forty-eight hours to produce or replace the document in question.

However, the bid shall be rejected if the bid bond is absent at the opening of bids.

(10) At the end of the bids-opening session, all bids including those that have been rejected shall be entrusted to an Analysis Sub-Committee established by the Tenders Board. This sub-committee shall have at least three members, one (1) representative of the Project Owner or the Delegated Project Owner.

**ARTICLE 93:** (1) For works, supplies and quantifiable services contracts, the opening of administrative documents and technical and financial offers shall be done in a single phase in the same session.

(2) For non-quantifiable services including Intellectual services, administrative and technical documents shall be opened in the first phase. During the second phase, only financial bids which obtained the required minimum points shall be opened in presence of the bidders concerned.

**SUB-SECTION VII**  
**ANALYSIS OF BIDS**

**ARTICLE 94:** (1) The Tenders Board shall determine the deadline for the analysis of technical and financial bids. This deadline shall not exceed ten (10) working days for small scale projects when the bids are opened in a single phase, and fifteen (15) working days when the bids are opened in two phases. For complex and large-scale projects, this period may be extended to twenty-one (21) days.

(2) The Chairperson and members of the Analysis Sub-Committee are selected on the list of Experts approved by the organ in charge of the regulation public contracts on the basis of their skills and experience in the field concerned by the invitation to tender, and taking into account their availability.

(3) The Chairperson and members of the Analysis Sub-Committee must be of good character, have a good mastery of the public contracts procedures and regulations, and have the technical competence and experience in the field concerned.

(4) The Chairperson and members of the Analysis Sub-Committee shall refrain from any action likely to compromise their objectivity and, in all cases, have no financial, personal interest or of any other nature, related to the contract examined.

**ARTICLE 95:** (1) The Analysis Sub-Committee shall first determine if bidders are eligible and if their bid is complete and substantially complies with the requirements of the tender file. The elimination of a bid for non-compliance with the requirements of the tender file must be based on criteria contained in the special regulations of the invitation to tender.

(2) It shall then proceed to a detailed analysis of the bids deemed compliant and which meet all the stipulations and conditions of the consultation file, using exclusively the criteria made known to the candidates in the tender file or by publication.

(3) The Chairperson of the Tenders Board may, on proposal of the Analysis Sub-Committee, ask the bidders or the competent administrations or bodies, clarifications on the bids.

(4) The clarifications requested and provided in writing shall not, in any way, lead to the change of elements in the bid to make it more competitive.

(5) The request for clarification shall be aimed at:

- finding an information in the tender;
- checking the accuracy of the information provided by a candidate, if necessary, with the issuing authorities;

- asking a bidder to confirm the correction of a calculation error or of an identified omission;
  - providing specifications on technical aspects not understood by the Analysis Sub-Committee or on the content of the price sub-details;
  - or justifying prices of tenders considered abnormally low.
- (6) The bidder shall have seven (7) days to furnish the requested clarifications.
- (7) Clarifications and answers furnished by the bidders shall be the subject of a summary report attached to the evaluation report.
- (8) Fraudulent acts, forged documents and false declarations shall lead to the elimination of the bid.
- (9) In case of differences between prices written in letters and prices in numbers, the price in letter shall be retained.

**ARTICLE 96:** (1) The bidder may propose variants in addition to the initial offer, when they are requested or when the possibility is offered to them explicitly in the tender file.

- (2) The tender must clearly specify the way in which variants must be taken into account for the evaluation of bids.

**ARTICLE 97:** During the award of contracts within the remit of jobbing orders and when it is expressly provided for by the consultation file, references of the sponsor or of a technical manager of a newly created national Small and Medium-sized Enterprise, shall replace that of the corporate person when the latter does not yet have of the number of years of experience or the required references.

**ARTICLE 98:** (1) At the end of its work, the Analysis Sub-committee shall produce an analysis report and submit to the tenders board.

- (2) The analysis report is a single document, initialled and signed by all the members of the sub-committee.
- (3) In case of disagreement, the non-signatories of the analysis reports shall be expected to express their opinion in a memorandum addressed to the Chairperson of the competent Tenders Board with a copy to the Project Owner or Delegated Project Owner. The Chairperson of the Tenders Board shall ensure that the memorandum is attached to the approved report.

- (4) The analysis report shall be presented to the Tenders Board by the Chairperson of the Analysis Sub-committee or if necessary, by a member of the sub-committee, duly mandated by the Chairperson of the Analysis Sub-Committee.

## **SUB-SECTION IX**

### **AWARD OF PUBLIC CONTRACTS**

**ARTICLE 99:** Subject to compliance with the conditions of conformity of bids:

- a) Contracts for works, supplies and quantifiable services shall be awarded to the bidder who submitted an offer which met the required technical and financial qualifications and proposed the lowest bid;
- b) The award of non-quantifiable services contracts including intellectual services and contracts awarded after an invitation to tender with design competition shall be attributed to the bidder presenting the best offer, through the combination of technical, financial or aesthetic criteria.

**ARTICLE 100:** (1) Where the subject of a public contract covers several types of services, this type of contract shall be determined by the services whose amount is predominant.

(2) For small-scale works contracts, executable by very small enterprises and national Small and Medium-sized Enterprises, the award criteria must take into account the previous performance of the bidder for similar services and its location.

**ARTICLE 101:** (1) The award of a contract shall be materialised by a decision of the Project Owner or Delegated Project Owner and notified to the successful bidder within a maximum of seventy two (72) hours of its signature.

(2) The Project Owner or Delegated Project Owner shall have a period of five (5) working days to sign the award decision and to publish the results from the date of receipt of the final award proposal from the competent Tenders Board except in the case of suspension of the procedure.

(3) The Project Owner or the Delegated Project Owner shall publish the consultation results including the price and deadline, in the Public Contracts Journal (JDM) published by the organ in charge of the regulation of public contracts.

(4) The successful bidder shall have a period of fifteen (15) working days from the notification to register the contract or the jobbing order. Thereafter, the Project Owner or Delegated Project Owner reserves the right to cancel the award decision after an unanswered formal notice to the successful bidder. In this case,

the bid bond shall be retained and the contract awarded to the candidate in second position.

(5) The unsuccessful bidders shall be invited to withdraw their bids within a period of fifteen (15) working days, except for the successful bidder, if necessary. Bids that are not withdrawn within this deadline shall be destroyed without any claims being lodged by the bidder.

(6) Upon publication of the results for award of the contract, an extract of the analysis report relating to the contract shall be notified by the Project Owner or Delegated Project Owner to each bidder at their request.

**ARTICLE 102:** (1) A Project Owner or Delegated Project Owner may cancel an invitation to tender without any claims being lodged by the bidder. However, where the tenders have been opened, this cancellation shall be subject to approval by the Authority in charge of public contracts.

(2) Project Owner or Delegated Project Owner shall notify the Chairperson of the competent Tenders Board of his decision and a copy sent to the organ in charge of the regulation of public contracts.

(3) The Project Owner or Delegated Project Owner shall publish the decision referred to in paragraph (2) above in the Public Contracts Journal of the organ in charge of the regulation of public contracts.

**ARTICLE 103:** (1) An invitation to tender may be declared unsuccessful if:

- a) no bid was registered;
- b) at the end of the bids-opening session, no bid conforming to the prescriptions of the tender file or no financial offer was compatible with available financing.

(2) Where the best financial offer is higher than the available financing, the Project Owner or Delegated Project Owner shall award the contract to the candidate in the next position and whose offer is considered technically and financially satisfactory.

(3) Where only one offer is deemed technically admissible but is higher than the available financing, the Project Owner or Delegated Project Owner may negotiate with the candidate who made this offer in view of obtaining a satisfactory contract.

(4) Where the financial offers of all the candidates whose technical offers were deemed admissible are higher than the available financing, the Project Owner or Delegated Project Owner may suspend the procedure to find the additional financing or may negotiate with the concerned candidates following the classification order.

- (5) The Project Owner or Delegated Project Owner shall ensure that the time limit required to source for funding or carry out negotiations are within the period of validity provided by the tender file or obtain a formal extension, if necessary.
- (6) Negotiations with the candidates should not substantially change the scope, nature, consistency and quality of the services. In any event, the financial impact of changes on the bid shall not exceed fifteen percent (15%) of the offer.
- (7) Any negotiation initiated, regardless of the outcome, must culminate in signed minutes by the two (2) parties, a copy of which is sent to the organ in charge of the regulation of public contracts.
- (8) The negotiations should in no case affect the unit prices or be conducted with more than one candidate at a time.
- (9) The Project Owner or Delegated Project Owner shall publish his decision to declare an invitation to tender unsuccessful and notify the Chairperson of the competent Tenders Board, with a copy sent to the organ in charge of the regulation of public contracts.
- (10) In case of division into lots, the above provisions shall apply to each lot.

**ARTICLE 104:** (1) The Project Owner or Delegated Project Owner may, after the approval of the Authority in charge of public contracts, cancel his decision to award a contract as long as it has not been notified, without any claims being lodged by the tenderers.

(2) The decision to cancel shall be published in accordance with article 102 (3) of this Code, where necessary.

**ARTICLE 105:** (1) A Tenders Board may propose the rejection of abnormally low bids to the Project Owner or Delegated Project Owner, provided that the bidder was invited to give justifications in writing and the said justifications were not acceptable.

(2) Requests for justifications and expected answers shall include:

- a) the production of the detailed breakdown of prices, its content, the price balance with the construction methods and the proposed calendar;
- b) the production methods of products, the terms of the provision of services, the process of construction;
- c) comparative advantages or exceptionally favourable conditions

at the disposal of the bidder to execute the works, to supply the products or to provide the services;

d) the originality of the project or work;

e) provisions relating to working conditions.

(3) In case the justifications provided by the candidate are considered unacceptable, the organ in charge of the regulation of Public Contracts shall examine the justifications and submit its conclusion to the Project Owner or Delegated Project Owner within a period of seven (7) working days from the date the issue was referred to by Project Owner or Delegated Project Owner.

(4) The Project Owner or Delegated Project Owner shall consider the opinion of the organ in charge of the regulation of Public Contracts before taking a decision.

### **SUB-SECTION VIII** **NATIONAL PREFERENCE**

**ARTICLE 106:** (1) During the award of a contract within the context of an international consultation, priority shall be given, all offers being equivalent and in order of priority, to bids presented by:

- a) a natural person of Cameroonian nationality or a corporate person governed by Cameroon law;
- b) an undertaking entirely owned or with the majority of shares owned by persons of Cameroonian nationality;
- c) a natural or corporate person having an economic activity on Cameroonian territory;
- d) Joint ventures involving undertakings governed by Cameroon law.

(2) The offers shall be considered equivalent when they meet the required technical criteria.

(3) For works and quantifiable services contracts, the preferable national margin shall be ten (10) percent for enterprises referred to in paragraph (1) above.

(4) For supplies contracts, the national reference may be considered only if the supply undergoes a transformation of at least fifteen percent (15%) at the local or regional level.

(5) No national preference shall be scheduled for non-quantifiable services including intellectual services.

(6) The national preference may be applicable only if it is provided for in



the tender file.

## **SUB-SECTION X** **SIGNATURE AND NOTIFICATION**

**ARTICLE 107:** (1) The Project Owner or Delegated Project Owner has five (5) working days as from the date on which the successful bidder subscribed to the contract.

(2) He shall notify the contract to its holder within five (5) days following the date of signature.

## **SECTION II** **CONTRACTS AWARDED BY MUTUAL AGREEMENT**

**ARTICLE 108:** A contract is awarded by mutual agreement when it is concluded without invitation to tender, after prior authorisation from the Authority in charge of Public Contracts and according to the procedure described in articles 110 and 111 of this Code.

**ARTICLE 109:** A contract may only be awarded by mutual agreement in the specific cases listed below:

- a) for needs that cannot be satisfied other than by a service requiring the use of a patent, a process, know-how, a licence or rights exclusively held by only one contractor, service provider or supplier;
- b) to replace, in cases of urgency, defaulting contractors or suppliers;
- c) for works, supplies or services which, for reasons of extreme urgency caused by cases of force majeure, cannot be subject to the time-limits of the procedure of an invitation to tender;
- d) for supplies, services or works supplementing those carried out under a first contract executed by the same bidder, subject to the initial contract being awarded according to the procedure of invitation to tender and the subsequent complementary contract only relating to supplies, services or works that were not included in the initially signed contract but are now required, as a result of unforeseen circumstances outside the parties' control and that such supplies, services or works cannot be technically or economically separated from the main contract.

**ARTICLE 110:** (1) The Project Owner or Delegated Project Owner shall request prior authorisation from the Authority in charge of public contracts to award a contract by mutual agreement. His request must be justified.

(2) The Authority in charge of public contracts shall examine the request and notify his response.

(3) In case of approval, the Project Owner or Delegated Project Owner shall carry out the direct consultation, without the obligation of making it public, of at least three companies, except in the case referred to in article 109 (a) and (d) of this Public Contracts Code.

**ARTICLE 111:** (1) The consultation files, bids of the bidders as well as the authorisation to award by mutual agreement shall be submitted to the Tenders Board for examination. The Board shall have seven (7) working days to formulate its award proposal.

(2) For contracts that are not within the remit of the Central Contracts Control Board, the Project Owner or Delegated Project Owner shall award the contract.

(3) For the contracts referred to in article 109 (c) of this Code, the Project Owner or Delegated Project Owner shall directly award the contract once the authorisation of the Authority in charge of public contracts is granted. In this case, the draft contract accompanied by the authorisation to award by mutual agreement, the consultation file, the offer of the successful bidder and the analysis report shall be submitted to the Tenders Board for its opinion. The Board shall have five (5) calendar days to give its opinion.

(4) For contracts other than those referred to in paragraph (2) above, the Project Owner or Delegated Project Owner shall forward the consultation file, the offer of the successful bidder including his administrative file to the competent Central Contracts Control Board for its opinion. This Board has seven (7) working days to issue its opinion.

(5) Pursuant to the provisions of article 51 of this Code, the successful candidate shall imperatively furnish an administrative file prior to the final award of the contract.

(6) Excluding contracts awarded by mutual agreement that have been programmed in the contracts award plan, the Project Owner or Delegated Project Owner shall have thirty (30) working days for the cases referred to in article 109 (a) and (d) of this Code and forty-five (45) working days for cases referred to in article 109 (b) and (c) of this Code after obtaining the prior authorisation of the Authority in charge of Public Contracts, to sign and notify the corresponding contract to the successful bidder, under pain of foreclosure of the authorisation to award by mutual agreement.

### **SECTION III**

#### **REQUEST FOR QUOTATION**

**ARTICLE 112:** (1) The request for quotation is a simplified procedure for the consultation of companies or Civil Society Organisations for the award of some jobbing orders not requiring a proposal of execution methodology from the bidder and for which there is no need for an evaluation by the Analysis Sub-Committee for the verification of compliance with technical specifications.

(2) Services that can be provided by request for quotation shall include:

- supplies, consumables and sundry materials;
- furniture;
- tools and small equipment;
- computer equipment;
- light rolling equipment;
- regular maintenance of public buildings and minor works;
- routine road maintenance works including clearing, weeding, cleaning of structures and gutters and garbage removal,
- treatment of critical points on earth or paved roads;
- manufacturing and/or laying of pavement as part of works relating to the High Labour intensive Approach;
- quantifiable services including security, management of green spaces.

(3) Qualification criteria include, where necessary, supporting documents for after-sales services.

**ARTICLE 113:** (1) The consultation shall be open to service providers of the sector concerned and who meet the qualification criteria indicated in the request for quotation.

(2) Requests for quotation shall be prepared by the Project Owner on the basis of model documents prepared by the organ in charge of the regulation of public contracts.

(3) The consultation notice shall be published under the same conditions as those of open invitations to tender.

(4) The price offers shall be established on the basis of the technical description and the quantity schedule prescribed by the Project Owner.

- (5) Quotations shall be received by the Project Owner and forwarded to the Tenders Board where they shall be opened and their compliance with the technical specifications verified.
- (6) The Tenders Board shall propose to award the contract to the bidder whose quotation fully complies with the administrative requirements and specifications of the technical description and is deemed the lowest.
- (7) The Project Owner shall decide on the award and publish the result in the forms provided for in article 102 of this Code.
- (8) The Project Owner shall send a copy of the award decision to the organ in charge of the regulation of public contracts.

## **SECTION IV**

### **PROCEDURES SPECIFIC TO SOME CONTRACTS**

#### **SUB-SECTION I** **FRAMEWORK AGREEMENT**

**ARTICLE 114:** (1) Framework agreements fixing the minimum and maximum supplies or services which may be ordered during a specified period and executed as and when purchase orders are issued shall be entered into with a single provider by lot following an open invitation to tender.

(2) Orders shall be issued without negotiation or reopening of competition according to the terms expressly provided for in the contract.

**ARTICLE 115:** (1) Framework agreements that give rise to subsequent contracts with purchase orders shall be entered into with at least three (3) suppliers per lot, pre-qualified following a call for candidatures and on the basis of their references in the relevant field.

(2) The pre-qualification procedure is subject to examination by the competent Tenders Boards.

(3) For each subsequent contract with purchase orders, the Project Owner shall consult the holders of the framework agreement, or where the framework agreement is divided into several lots, the holders of the lot corresponding to the relevant contract with purchase order, in accordance with the terms and conditions laid down in the framework agreement.

(4) The framework agreement may provide that the award of some subsequent contracts with purchase orders does not give rise to the reopening of competition when it appears that these contracts may be executed by only one of the pre-qualified service providers, subject to the prior authorisation of the Authority in charge of public contracts.

**ARTICLE 116:** Consultation files relating to the framework agreement shall be submitted to the competent Tenders Board for review.

## **SUB-SECTION II**

### **INDIVIDUAL CONSULTANTS**

**ARTICLE 117:** (1) Individual consultants are natural persons recruited by a Project Owner or a Delegated Project Owner on account of their skills for the provision of intellectual services that do not require a multi-disciplinary team.

(2) Individual consultants shall be chosen based on their qualifications, considering the nature of the mission.

(3) Consultants shall be selected by comparing the qualifications of those who declared themselves interested in the mission following the call for expression of interest fixing the terms of recruitment.

(4) In order to be selected, the consultants must have all the relevant minimum qualifications required and those selected for recruitment must be the best qualified and able to carry out the mission. The assessment of their abilities mentioned in the curriculum vitae shall be based on their qualifications, previous experience and, if necessary, their knowledge of the local context.

(5) The pre-qualification report highlighting the ranking of the candidates in order of merit shall be prepared by the Project Owner. This report and the draft contract shall be forwarded to the appropriate Tenders Board for adoption.

(6) Upon adoption of the report referred to in paragraph (5) above, the Project Owner shall forward to the best candidate the terms of reference of the mission and request his financial proposal in view of negotiating the work methodology and, if need be, the unit prices.

(7) In case these negotiations are not satisfactory, the Project Owner shall negotiate with the next qualified candidate on the list.

(8) When partners or permanent staff members of a consulting firm apply as individual consultants, the conflict of interest provisions of this Code that apply to their parent company shall also apply to them.

**ARTICLE 118:** The recruitment of individual consultants shall fall within the remit of jobbing orders.

## **SUB-SECTION III**

### **CONTRACTS AWARDED THROUGH INVITATION TO TENDER WITH DESIGN COMPETITION**

**ARTICLE 119:** (1) For contracts awarded by invitation to tender with design competition, envelopes containing administrative documents and artistic proposals are first opened by the Tenders Board.

- (2) At the end of the opening of the bids received, the Tenders Board shall constitute a jury for the purpose of evaluating the projects.
- (3) The jury shall comprise mainly representatives of the trades involved in the project and at least one (1) representative of the Project Owner.
- (4) Secondly, only the technical proposals including the provisional estimated cost of the project, the references of the bidder and the overall cost of the project of bidders having obtained the minimum points required for the competition shall be opened in the presence of the bidders concerned.
- (5) Before giving its opinion, the jury may also summon the competitors in writing or by any other appropriate means in order to obtain clarifications on their projects.
- (6) The jury may consult any expert or technician for explanations concerning particular points of the proposed projects and/or instruct a sub-committee to analyse these projects before taking a decision.
- (7) The jury may also ask one or more competitors to make some modifications on their projects. These modifications may relate to the design and/or execution of the projects, possibly with resulting cost differences. The processes and costs proposed by competitors cannot be disclosed during the discussion to other competitors.

**ARTICLE 120:** (1) The jury shall evaluate and rank the projects on the basis of the criteria set out in the competition rules as follows:

- a) Where the invitation to tender with design competition relates only to the establishment of a project, the jury shall classify the said projects according to the technical and aesthetic value as well as the overall cost of each project, in accordance with the criteria laid down in the competition rules.
- b) The overall score shall be obtained by adding the technical score and the estimate of the overall cost of the project, according to a weighting provided for in the tender file.
- c) Where the competition concerns the cases provided for in article 81 (b), (c) and (d) above, the jury shall examine and evaluate the said projects on the basis of the technical and aesthetic value of each project, of its overall cost, as well as the conditions of its possible implementation, in accordance with the criteria laid down in the competition rules.

The jury of the competition shall finalise, if necessary, with the selected competitors, the terms of the draft contract to be awarded for carrying out the study and/or for the monitoring and control of its implementation, as the case may be.

The jury shall evaluate the offers and determine the most advantageous offer. For this purpose, it shall add the scores obtained by each competitor for the competition itself, the estimate of the overall cost of the project and the financial offer, according to a weighting provided for in the tender file.

(2) At the end of the ranking of projects, the jury shall invite by any means of communication **that can give a certain date**, the competitor ranked first to:

- a. confirm the corrections of material errors noted;
- b. regularise the discrepancies found therein.

(3) To this end, the jury shall set a deadline that cannot be less than seven (7) working days from the date of completion of the evaluation works of the proposed projects.

(4) After examining the documents and responses received, the jury shall decide:

- a) either to propose to the Tenders Board to retain the bidder concerned;
- b) or to propose to the Tenders Board to exclude the competitor concerned when the latter:
  - does not respond within the specified time-limits, does not confirm the requested corrections or does not correct the discrepancies noted;
  - produces a financial offer signed by a person who is not authorised to commit it or expresses any restrictions or has reservations.

(5) In this case, the jury shall invite the competitor whose bid is ranked second, examine the documents and responses received and decide either to retain him or to exclude him under the conditions set out in b) above.

(6) If the jury does not retain the competitor concerned, it shall invite the competitor whose bid is ranked second and examine the responses and documents under the same conditions fixed above until the procedure is completed successfully or the competition declared unsuccessful.

**ARTICLE 121:** (1) The jury of the competition shall draw up minutes of each of its meetings. These minutes, which are neither made public nor communicated to the competitors, shall mention the discussions that the jury had with the competitors and, if need be, the observations or protests presented by the members or by the competitors as well as the jury's point of view on these observations or protests.

(2) The minutes signed by the Chairperson and the members of the jury must include the final results of the competition and indicate the reasons for the elimination of competitors as well as those justifying the choice of the jury.

(3) Where appropriate, the report of experts, technicians or sub-committees shall be attached to the minutes.

(4) The jury shall decide on the final ranking of the selected projects and make its proposals to the Tenders Board in order to award the prizes provided for in the competition programme and/or award the contract to the selected competitor, as the case may be.

## **SECTION V** **DIGITALISATION OF PROCEDURES**

**ARTICLE 122:** (1) Procurement procedures may be digitalised by the use of electronic means.

(2) The use of the digitalisation procedure must comply among others with:

- a) the use of an adequate information exchange system ensuring the integrity, confidentiality and authenticity of the information;
- b) an electronic signature system.

(3) The procedures for implementing the digitalisation shall be the subject of a special instrument of the Authority in charge of public contracts.

## **PART IV** **EXECUTION AND CONTROL OF THE EXECUTION OF CONTRACTS**

### **CHAPTER I** **GENERAL PROVISIONS**

**ARTICLE 123:** (1) Any public contract shall be a single document written out on one side of the paper.

(2) Public contracts and their additional clauses shall be notified by the Project Owner or the Delegated Project Owner.

(3) All public contracts must be notified before commencement of execution.

(4) Any claim relating to services performed prior to the notification of the contract shall therefore be inadmissible.

(5) Upon notification of the contract to its holder, the Project Owner or Delegated Project Owner shall have fifteen (15) calendar days to issue the administrative order for the commencement of services.

(6) A copy of the administrative order for the commencement of services shall be sent by the Project Owner or Delegated Project Owner to the organ in charge of the regulation of public contracts and to the Ministry of Public Contracts within seven calendar days from the date of notification.



## **SECTION I**

### **CONTENT OF PUBLIC CONTRACTS**

**ARTICLE 124:** Each contract must contain at least the following indications:

- a) the subject and number of the contract;
- b) the means of funding the expenditure and the budget head;
- c) the contracting partners;
- d) the Project Owner or Delegated Project Owner;
- e) the Contract Manager and Contract Engineer;
- f) justification of the capacity of the person signing the contract and that of the contracting party;
- g) the enumeration in order of priority of the constituent documents of the contract including especially: the bid or commitment document, the Special Administrative Conditions, the technical specifications and terms of reference, estimates or detailed estimates, the schedule of unit prices, the sub-detail of prices and the General Administrative Conditions to which it is specifically subjected;
- h) the price of the contract accompanied by the conditions for its determination as well as the possible conditions for its revision or updating;
- i) the fiscal and customs obligations;
- j) the time limit and place of execution;
- k) the conditions for constituting and returning the guarantees;
- l) the date of notification;
- m) the paying bank of the Administration's contracting partner;
- n) the conditions of acceptance or delivery of goods or services;
- o) the terms of payments for the goods or services;
- p) accounting officer responsible for payment;
- q) the conditions for settling disputes;
- r) the conditions for termination;
- s) and the competent jurisdiction and legislation in force.

**ARTICLE 125:** (1) The drafting or formatting of the final constituent documents of the contract shall be ensured by the Project Owner or Delegated Project Owner.

- (2) The final contract shall in no case amend the scope and nature of the services provided for in the tender file. Only minor changes without financial incidence or technical influence in relation to the bid retained shall be accepted.

## **SECTION II**

### **ACCOUNTING OBLIGATIONS**

**ARTICLE 126:** (1) The Administration's contracting partner shall open and update:

- a) an accounting document specific to the contract indicating the various sources of funding, the statement of billed and paid sums as well as the source(s) of funding;
- b) a statement of fiscal and customs declarations related to the contract.

(2) Authorised supervisory bodies may, for reasons of verification, have access to the accounting document referred to in paragraph 1 above up to a maximum of three (3) years after the date of the final acceptance of the goods or services or that of the last delivery related to the contract concerned.

(3) The contract documents referred to in article 130 of this Code shall be expressly referred to in the contract.

**ARTICLE 127:** The accounting documents of the Administration's contracting partner must trace the operations relating to the contract in the following manner:

- a) expenditure on supplies, acquisition of building materials, raw materials or manufactured objects intended for the contract;
- b) the cost of exclusively employed labour as well as all other costs or itemised expenditure;
- c) the list of executed quantities or supplies delivered;
- d) billing of services provided.

**ARTICLE 128:** Project Owners or Delegated Project Owners shall be required to keep updated public contracts accounting documents, established according to standards generally accepted in Cameroon. These accounts, based on convincing supporting documents, must clearly indicate among others:

- a) planned commitments per contract for the financial year or the corresponding budgets;

- b) sources of financing;
- c) contracts awarded during the financial year;
- d) bills received and validated;
- e) amounts paid.

### **SECTION III** **SPECIFICATIONS**

**ARTICLE 129:** Specifications shall determine the conditions under which contracts are executed. They shall comprise the following general and special documents:

- a) the General Administrative Conditions which establish the provisions concerning the execution and supervision of public contracts applicable to a whole category of contracts;
- b) the Special Administrative Conditions which establish the administrative and financial provisions appropriate for each contract;
- c) all other technical conditions and general and special documents defining the characteristics of the works, supplies or services.

### **SECTION IV** **CHANGES DURING THE EXECUTION OF THE CONTRACT**

**ARTICLE 130:** (1) The provisions of a public contract may be amended only by way of additional clause.

- (2) However, the additional clause shall not alter the subject of the contract, the contract holder, the settlement currency, or the price revision or updating formula.
- (3) The additional clause shall be examined and adopted by the competent Tenders Board of the initial contract.
- (4) The total amount of all additional clauses shall not exceed thirty percent (30%) of the initial contract.
- (5) Administrative orders affecting prices or time limits shall constitute the contractual management documents of a contract and shall be issued under the following conditions:
  - a) where an administrative order is likely to cause the cost overrun of the contract price, its signature shall be subject to the justification of funding by the Project Owner;

- b) in case of cost overrun of the contract price, the amendment of the contract may only be done by additional clauses and additional supplies and services may only be paid after signature of the additional clauses;
  - c) Administrative orders for additional supplies and services may be signed by the Project Owner or Delegated Project Owner and subsequently regularised by additional clauses, as long as their financial impact is less than ten percent (10%) of the amount of the contract.
- (6) Whatever the case, any modifications concerning the technical specifications must be the subject of prior study on the scope, cost and contract deadline.
  - (7) Consideration of the variation in the quantity of goods and services shall be done under the conditions defined by the General Administrative Conditions.

## **SECTION V**

### **SUB-CONTRACTING**

**ARTICLE 131:** (1) A public contract may give rise to sub-contracts or subsidiary orders according to the conditions set out in the General Administrative Conditions, subject to the prior authorisation of the Project Owner or Delegated Project Owner.

- (2) Notwithstanding the recourse to sub-contracting or placing of subsidiary orders, the main contractor shall still be responsible for the execution of all the obligations of the said contract.

**ARTICLE 132:** (1) In the event of compulsory recourse to sub-contracting, the tender file must first mention the nature of the supplies and services to be sub-contracted.

- (2) The percentage of the supplies and services likely to be sub-contracted within the framework of a public contract shall be laid down by the General Administrative Conditions.
- (3) Sub-contracted supplies and services must first and foremost be awarded to national Small and Medium-sized Enterprises with at least fifty-one (51%) of the capital held by nationals and in case of insufficiency or deficiency, to SMEs and Large Companies with at least thirty-three percent (33%) of the capital held by nationals.
- (4) A specific instrument of the Authority in charge of public contracts shall specify, by field of activity, the list of services likely to be sub-contracted.

**ARTICLE 133:** (1) A bidder who intends to execute a contract by using one or more sub-contractors must, when submitting his bid, indicate the nature and amount of each of the services he shall provide through sub-contracting.

(2) In the case where the amount of a service to be sub-contracted is more than or equal to ten percent (10%) of the total amount of the contract, the bidder must attach to his bid documents that help to evaluate the technical and financial capacity of the sub-contracting company.

**ARTICLE 134:** (1) In order to obtain the authorisation or the approval of a sub-contractor, the principal company shall provide the Contract Manager or send to him by registered mail, a file including:

- a) the nature of the services for which sub-contracting is planned;
- b) the name, reason or corporate name and address of the proposed sub-contractor,
- c) the subcontractor's references in the field concerned,
- d) the draft sub-contract.

(2) The subcontract must comply with the commitments of the main company.

(3) Where the subcontractor is to be paid directly, the main company shall be required at the time of the request for authorisation, to establish that the assignment or pledge of debts arising from the contract does not preclude the direct payment of the sub-contractor.

## **SECTION VI** **JOINT CONTRACTING**

**ARTICLE 135:** (1) In a joint-contract, the project is divided into distinctive parts to be carried out by each distinct undertaking within the framework of the group of associated undertakings.

(2) In case of joint-contracts, the tender file shall specify the conditions of presentation of the bids.

**ARTICLE 136:** (1) The Special Administrative Conditions must specify if the associated undertakings are bidding jointly or severally.

(2) Associated undertakings are said to be joint when each of them is bound by the whole contract and must make up for the possible defaults by its partners. One of the partners must be designated by the Special Administrative Conditions as the representative of the whole group of undertakings vis-à-vis the Project Owner or Delegated Project Owner. Joint contractors shall share the sums paid by the administration into a single account.

(3) Associated undertakings are several when different lots of a contract are assigned to each of the undertakings for execution. One of them must be designated in the Special Administrative Conditions as the representative who shall be jointly responsible with each of the other undertakings in the

contractual obligations towards the Project Owner or Delegated Project Owner. The representative shall represent all the several undertakings vis-à-vis the Project Owner or Delegated Project Owner for the execution of the contract. Each undertaking shall be paid by the Administration into its own account.

## **SECTION VII** **GUARANTEES**

**ARTICLE 137:** Subject to the provisions of article 143 of this Code, any holder of a public contract must to provide:

- a) a security in guarantee of the complete execution of the contract hereinafter referred to as the “final bond”;
- b) when necessary, a security in guarantee of the proper execution of the contract and of the recovery of the sums for which the holder may be liable with respect to the contract, in replacement of the “retention bond” to be collected from accounts of the Administration’s contracting partner, hereinafter referred to as the “performance bond”.

**ARTICLE 138:** (1) The final bond shall not be less than two percent (2%) and more than five percent (5%) of the initial value of the contract, increased, if need be, by the value of the additional clauses.

(2) The retention bond shall be deducted and the performance bond constituted when the contract has a guarantee or maintenance period. It shall not be more than ten percent (10%) of the initial value of the contract, increased if need be, by the value of the additional clauses.

(3) The retention bond or performance bond shall not be required for intellectual services contracts.

**ARTICLE 139:** (1) The final bond must be constituted within twenty (20) calendar days following the notification of the contract and in any case, before the first payment.

(2) The validity period of the final bond must cover the time needed for the provision of goods and services until provisional acceptance.

(3) The validity period of the retention bond shall cover the period of guarantee or maintenance indicated in the contract until final acceptance.

(2) The conditions and timing of the refund of the securities shall be fixed by the General Administrative Conditions, subject to the exemptions which could be introduced by the Special Administrative Conditions.

**ARTICLE 140:** (1) The security may be replaced by a bond issued by a banking establishment authorised in accordance with instruments in force, with the Project Owner or Delegated Project Owner as beneficiary or by a joint and several guarantee.

(2) Holders of public contracts must provide guarantees from financial bodies approved by the Minister of Finance or having a local correspondent which has received such approval.

(3) Small and Medium-sized Enterprises (SME) constituted of national capital and managed by nationals may, in lieu of the security, provide a certified cheque, a bank cheque, a **legal mortgage**, or a bond by a banking establishment or financial institution authorised in accordance with the instruments in force.

(4) Any structure having produced a personal and several guarantee or any institution referred to in paragraph 1 above must undertake to pay, on the orders of the Project Owner or Delegated Project Owner and up to the amount guaranteed, sums that the Administration's contracting partner may be liable for under the contract.

(5) The provisions of paragraphs (1), (2) and (3) above shall be implemented in accordance with the rules prescribed by the Project Owner or Delegated Project Owner.

**ARTICLE 141:** (1) Where the Administration's contracting partner has fulfilled his contractual obligations:

a) the final bond shall be refunded following a release order issued by the Project Owner or Delegated Project Owner from the date of final acceptance of works, supplies or services, where the contract has no guarantee deadline or from the date of provisional acceptance, where the contract has such a deadline;

b) the **retention bond** shall be released or the performance bond returned following a release order issued by the Project Owner or Delegated Project Owner from the date of acceptance of works, supplies or services, after expiration of the guarantee deadline.

(2) Upon expiration of a deadline of thirty (30) calendar days, the competent structure shall undertake to refund the security or release the retention fund referred to in paragraph 1 above, upon simple request by the Administration's contracting partner.

(3) Upon expiration of the deadline referred to above, the bond shall cease to have any effect, even in the absence of the release, except if the Project Owner or Delegated Project Owner has duly notified the Administration's contracting partner that he has not honoured all his obligations.

(4) In this case, the end of the commitment of the bond can only be put into effect by a release order issued by the Project Owner or Delegated Project Owner.

**ARTICLE 142:** Holders of a jobbing order may be exempted from the obligation to provide the bonds provided for in article 137 of this Code.

## **SECTION VIII** **INSURANCE POLICY**

**ARTICLE 143:** (1) When provided for in the Special Administrative Conditions, any contract holder is required to subscribe from one or more authorised insurance companies, and as soon as the contract is notified, to an insurance policy covering the risks associated with the provision of services under his contract.

(2) The policy must in any case cover all personal injuries, as well as material and immaterial damages caused to third parties or works from the day after his subscription to the final acceptance of the services provided or following a ten-year period, if necessary.

(3) Except by express waiver granted by the Minister in charge of insurance, it shall be forbidden to take out a direct risk insurance concerning a person, property or liability situated in Cameroon from a foreign insurance company, which does not conform to prescriptions of the CIMA Insurance Code.

(4) Any holder of a contract of foreign nationality or governed by foreign law having taken out an insurance policy against export risks in his country of origin shall be bound to forward the said insurance policy to the Project Owner or Delegated Project Owner and to the Autonomous Sinking Fund, where need be, within a maximum deadline of two (2) months from the date of notification of the contract.

(5) He shall inform the authorities and body referred to in paragraph (5) above of any notice of potential claim.

## **CHAPTER II** **PRICE OF PUBLIC CONTRACTS**

### **SECTION I** **CHARACTERISTICS OF THE PRICE**

**ARTICLE 144:** (1) The price of the contract shall remunerate the Administration's contracting partner.

(2) Goods and services forming the subject of the contract shall be paid



either by all-in prices applied to all or part of the contract, whatever the quantities, or by unit prices applied to the effectively executed quantities:

- a) A lump sum price shall be any price which remunerates the contractor for all the goods or services, structure or part of a structure as defined in the contract. An all-in price shall be imposed once all the goods or services are well defined during the conclusion of the contract.
- b) A unit price shall be the price of an element of a good or service, of a type or an item of structure, the quantities of which are estimates in the contract.

**ARTICLE 145:** (1) Whether the price is a lump sum or a unit price, the price shall be firm where it cannot be modified because of predictable economic changes during the execution period.

(2) In a case contrary to the provisions of paragraph (4) above, the price shall be revisable.

## **SECTION II**

### **VARIATION OF THE CONTRACT PRICE**

**ARTICLE 146:** (1) The introduction of a price revision clause in a contract shall not be systematic; prices should be concluded firm as often as possible.

- (2) Any Contract whose duration of execution is not more than twelve months shall not be subject to price revision.
- (3) The price of goods and services shall be revisable once the contract provides for the modification of the initial cost as the execution progresses.
- (4) Unless waived following a negotiation between the Project Owner or Delegated Project Owner and the contract holder, the price must be updatable in case of a firm price contract and after a period of at least six (6) months between the bids-opening date and the date of notification of the contract.
- (5) Firm price contracts may be revised if the deadlines of the initial contract exceed two (2) months for reasons not attributable to the contract holder.
- (6) A contract is either revisable or updatable following the conditions defined in paragraphs (3), (4) and (5) above.
- (7) Price revision or updating in conformity with the terms of the contract shall not give rise to additional clauses.

**SECTION III**  
**TERMS AND CONDITIONS FOR THE REVISION AND UPDATE OF CONTRACT**  
**PRICES**

**ARTICLE 147:** (1) The terms and conditions of the revision and update of the price must be explicitly provided for in the initial contract.

(2) Any contract with revisable price must include either:

- a) a single price revision formula applicable on all goods or services;
- b) several complete independent formulas, each one of them applicable on a good or service whose price is separate in the contract;
- c) or a formula by currency of payment if there are several, using the indexes of the country of origin of the inputs.

(3) The revision formulas must obligatorily include a fixed part of at least zero point one five (0.15).

(4) The revision threshold represents the percentage from which the change in the overall price of the contract shall lead to a price revision.

(5) The margin of neutralisation is the share of increase that shall remain in any case, at the expense of the contract holder, or decrease which, conversely, he shall benefit from.

(6) The margin of neutralisation shall always be less than or equal to the revision threshold.

(7) The margin of neutralisation is deducted from the coefficient of revision.

(8) The coefficient of revision shall apply to:

- a) services provided during the month; deductions relating to works done under direct execution, bonuses, reimbursements of advances applicable to the revised amount;
- b) penalties;
- c) interests on overdue payments.

(9) It shall be forbidden to introduce a price revision clause by way of additional clauses in a contract awarded on the basis of a firm price.

(10) Where a contract includes a price revision clause, it must specify the date of establishment of the initial price, as well as the terms and conditions of revision of the said price.

(11) The updating formula drawn up in accordance with this article shall not include a margin of neutralisation.

(12) The organ in charge of the regulation of public contracts shall be responsible, in collaboration with the Project Owner, the Delegated Project Owner and the other administrations concerned, for the verification of the statement of amounts due for the update and revision of prices duly approved by the Contract Engineer and the Contract manager, before any payment.

(13) It shall have fifteen (15) working days to give its opinion as soon as it receives the file.

(14) In any event, the revision or update of prices shall not exceed twenty-five percent (25%) of the amount of the contract, on pain of termination, unless waived by the Authority in charge of public contracts.

However, when both parties do not wish to terminate the contract, they may either agree to execute the entire contract up to the ceiling, or modify, by additional clause, the price variation formula to meet the above-mentioned ceiling or enter into negotiations to set new lower prices.

#### **SECTION IV**

##### **DIRECT EXECUTION**

**ARTICLE 148:** (1) Where a contract includes goods or services to be executed directly, these goods or services shall be executed at the behest of and under the responsibility of the Project Owner or Delegated Project Owner. In this case, the Special Administrative Conditions must indicate the nature, the terms of payment and the value of the various elements which contribute in determining the settlement price.

(2) The amount of the work executed directly referred to in paragraph (1) above shall not exceed two percent (2%) of the value of the contract, inclusive of all taxes inclusive.

**ARTICLE 149:** (1) In the event of a duly noted failure of the Administration's contracting partner complete the contract, the Project Owner or Delegated Project Owner may, instead of terminating the contract, and after the express authorisation of the Authority in charge of public contracts, prescribe a total or partial direct execution at the risks and expenses of the said contracting partner.

(2) The conditions governing direct executions shall be laid down by a special instrument of the Authority in charge of public contracts.

#### **SECTION V**

##### **PUBLIC CONTRACTS AS SECURITY**

**ARTICLE 150:** (1) Any contract concluded in accordance with the provisions of this Code may be used as security, subject to any form of transfer of claim.

- (2) The security provided for in paragraph (1) above shall be in the form of a bilateral contract between the Administration's contracting partner and a third party called "secured creditor".
- (3) The secured creditor shall notify in writing or shall serve the Project Owner or Delegated Project Owner and the accounting officer in charge of payment with a certified true copy of the original security document.
- (4) From the date of notification or service referred to in paragraph (3) above and except for the inability to pay, the accounting officer in charge of payment shall pay directly to the secured creditor the amount of the claim or part thereof given to him as security.
- (5) Where the security is constituted for the benefit of several claimants, each of them shall receive the percentage of the claim, which was assigned to him in the document, the indications of which shall be notified or served to the accounting officer in charge of payment.
- (6) No modification of the designation of the accounting officer in charge of payment, nor in the terms and conditions of payment, except in this last case with the written approval of the secured creditor, shall take place after the notification or service of the security.
- (7) The release of the notifications or service of the security shall be given by the secured creditor to the accounting officer in charge of payment, keeper of the security document provided for in paragraph (3) above, in writing. It shall take effect from the second working day following that of receipt by the accounting officer in charge of payment of the document informing him of it.
- (8) Only preferential claims provided for by laws or regulations in force shall take precedence over the rights of secured or subrogated creditors.

**CHAPTER III**  
**FOLLOW-UP, CONTROL OF EXECUTION AND PAYMENT**  
**OF PUBLIC CONTRACTS**

**SECTION I**  
**FOLLOW-UP AND CONTROL OF THE EXECUTION OF PUBLIC CONTRACTS**

**ARTICLE 151:** (1) The control of the execution of public contracts shall be done by:

- a) the Project Owner, Delegated Project Owner through the Contract Manager, Contract Engineer and Project Manager, where necessary;
- b) the Ministry of Public Contracts through unannounced inspections;

- c) the Independent Auditor through post audits of public contracts;
  - d) the other State control bodies provided for by the laws and regulations in force.
- (2) The control of the execution of public contracts aims at ensuring compliance with the standards of quality, comfort, safety and sustainability of the structure.
- (3) Supervision shall be done by a natural or corporate person governed by private law, for works and supplies contracts above the thresholds set by a special instrument of the Authority in charge of public contracts.
- (4) However, for Administrations with appropriate technical capacities or whose organic texts cover technical studies or controls, the Ministry of Public Contracts may notify them of its agreement for the derogation concerning this private project management.
- (5) For contracts whose price thresholds are below those referred to in paragraph (3) above, Project Owners or Delegated Project Owners who do not have the required expertise shall resort to a Project manager outside their services who is governed by public or private law for the monitoring of the execution.
- (6) If the project management is governed by public law, it shall be ensured by the Contract Engineer.
- (7) For intellectual services contracts relating to studies and audits, the project management shall be done in the form of a Follow-up and Technical Acceptance Committee. This committee shall comprise, among others, members outside the services of the Project Owner or of the Delegated Project Owner.
- (8) Where the Project Owner or the Delegated Project Owner does not have the qualified staff to ensure the preparation and follow-up of the execution of insurance contracts, he may resort to the expertise of a specialist in the domain of insurance outside his services, in order to define technical specifications of the services to be delivered and/or for the follow-up of the execution of the contract. If this expert is called to serve as a broker, he should be authorised pursuant to the law in force.

**ARTICLE 152:** (1) Pursuant to provisions of Law No. 99/017 of 22 December 1999 and subsequent laws on soils quality control as well as on the quality control of construction materials and geotechnical studies, the execution of contracts subject to these controls shall also be subject to the production by the entrepreneur, of a compliance certificate that attests that the said controls have been regularly carried out and were satisfactory.

- (2) The certificate shall be delivered by the State body in charge of questions relating to quality control of soils and construction materials, on the basis of a technical file that shall be presented by the Project Manager and, where

necessary, by the entrepreneur.

**ARTICLE 153:** (1) As concerns works contracts for which execution control is not ensured by a private Project Manager, the Contract Manager and Contract Engineer, as well as other actors involved in the execution control shall receive a compensation that shall be set by a decision of the Project Owner or Delegated Project Owner.

(2) This compensation as well as the required material for the control shall be borne by the budget of the Project Owner or Delegated Project Owner.

**ARTICLE 154:** The Project Manager, whether governed by public or private law, shall ensure his monthly and final reports are sent to the Project Owner or the Delegated Project Owner, to the Minister in charge of public contracts and to the organ in charge of the regulation of public contracts.

**ARTICLE 155:** The terms and conditions for public project management shall be laid down in a special instrument of the Authority in charge of public contracts.

### **SECTION III** **ACCEPTANCE COMMITTEES** **AND FOLLOW-UP AND TECHNICAL ACCEPTANCE COMMITTEES**

**ARTICLE 156:** (1) Services delivered within the framework of public contracts are systematically subject to acceptance by a committee whose members are indicated in the Special Administrative Conditions of the contract and according to terms and conditions defined in the General Administrative Conditions for works, supplies and intellectual services.

(2) For works and supplies contracts, the acceptance committee shall be competent to carry out partial, provisional and/or final acceptances.

(3) For studies and audits contracts, the acceptance shall be carried out by a Follow-up and Technical Acceptance Committee.

(4) The acceptance committee for works contracts or for follow-up and technical acceptance shall ascertain, if necessary, the existence of compliance certificates as well as of a pre-acceptance report before declaring works accepted or the technical acceptance of studies.

**ARTICLE 157:** (1) Acceptance operations or procedures for technical acceptance shall lead to the signing, forthwith, of an acceptance report indicating whether the acceptance is declared or not and, if necessary, presenting reservations to be lifted alongside deadlines, before declaration of the said acceptance.

(2) In order to be valid, the official acceptance report must be signed by at least two thirds (2/3) of the members among whom the Chairperson.

(3) The Chairperson, members and rapporteurs shall receive on the occasion of acceptances and technical acceptances, payment fixed by decision of the Project Owner or the Delegated Project Owner.

(4) This payment shall be borne by the budget of the Project Owner or Delegated Project Owner.

## **SECTION IV** **SETTLEMENT OF PUBLIC CONTRACTS**

### **SUB-SECTION I** **COMMON PROVISIONS**

**ARTICLE 158:** (1) Subject to provisions of various agreements, loan agreements or international agreements, any payment relating to a public contract shall be made through a transfer into an account lodged in a first rate-banking or financial institution governed by Cameroon law and duly authorised pursuant to legal instruments in force or through documentary credit.

(2) Any drawing from an external funding credit shall be subject to the prior endorsement of the Autonomous Sinking Fund.

(3) Any correction in the banking information can only be done through an additional clause.

(4) Operations carried out by the Administration's contracting partner likely to lead to payments of advance, payments on accounts or final payments, shall be made official through any written means or, where necessary, following the terms and conditions defined in the General Administrative Conditions.

### **SUB-SECTION II**

#### **ADVANCE PAYMENTS**

**ARTICLE 159:** Where they are clearly indicated in the Special Administrative Conditions, the start-off advance or the advance for supplies shall be granted to the Administration's contracting partner in a bid to enable him to carry out operations necessary for the execution of the services provided for in the contract. .

**ARTICLE 160:** (1) The Administration's contracting partner may, upon simple request addressed to the Project Owner or to the Delegated Project Owner and without any justification, obtain a start-off advance, whose amount shall not exceed twenty per cent (20%), inclusive of all taxes, of the initial contract price for works or intellectual services contracts and forty

percent (40 %) for supplies contracts.

(2) The rates above shall be calculated either from the initial contract price or from the amounts corresponding to each installment for contracts in phases.

(3) In case of call-off contracts, the amount of the start-off advance shall be calculated on the basis of the maximum amount to be executed for a given period.

(4) The reimbursement of the start-off advance shall be done through a deduction from the amounts due to the holder during the execution of the contract and following conditions defined in the said contract. It shall start when the amount for the services delivered for the contract, estimated on a base price, reaches or goes beyond forty per cent (40%) of the initial contract price or of the instalment and ends when the amount reaches eighty percent (80%). If the contract does not lead to a payment on account but is subject to a single payment, the start-off advance shall be deducted at once from the single payment.

(5) This start-off advance shall be guaranteed at one hundred percent (100%) by a banking establishment governed by Cameroon law or by a first-rate financial institution duly authorised, pursuant to the regulations in force.

(6) The start-off advance referred to in paragraph (1) above shall be paid to the Administration's contracting partner according to the conditions laid down in the Special Administrative Conditions.

(7) The payment referred to in paragraph (6) above shall take place after the required guarantees have been put in place, in accordance with the provisions of this Code.

**ARTICLE 161:** (1) Advances for general procurement may be granted to finance expenses initiated for the execution of works, supplies, or services forming the subject of a contract.

(2) Each contract shall set the special administrative or technical conditions to which advance payments shall be subject, in accordance with the terms and conditions laid down in this Code.

(3) Advances for general procurement shall be paid after presentation of supporting documents for disbursements controlled by the Project Owner or Delegated Project Owner.

(4) Any advance payment shall be subject to one of the following services:

- a) delivery on the work site or on related sites of materials, raw materials or manufactured objects to be used for the execution of the contract, provided:



- b) they have been acquired in full ownership by the Administration's contracting partner, and have effectively been paid for by him;
- c) they are allocated in such a way that their final destination is well known;
- d) they can be controlled by the Project Owner or Delegated Project Owner designated to that effect.

(5) Advance payments for general procurement authorised as prior expenses shall be followed up by the accounting service of the contracting partner until clearance. They shall be reimbursed, following a frequency that shall be defined in the contract, by deductions done subsequently on amounts due to the contract holder in a form of a payment on account or balance. The frequency of the reimbursement shall take into account the proportion of the elements that produced the advance for the part of the contract already executed.

(6) In all cases, the undertaking shall be responsible for the security of the materials for which the advance for general procurement has been made until the acceptance of the works.

### **SUB-SECTION III** **PAYMENTS ON ACCOUNT**

**ARTICLE 162:** (1) Except there is an exemption provided for in the Special Administrative Conditions, the Administration's contracting partner may obtain periodic payments on accounts.

(2) Conditions for payment on accounts shall be defined in the special administrative conditions.

(3) Any payment on account shall be subject to the provision of services referred to in the contract and shall be received within the conditions laid down in articles 157 and 158 of this Code, provided there is a proof for that payment by the Administration's contracting partner, when these services have been delivered by sub-contractor.

(4) In case of non-payment of a sub-contractor for services already paid by the Project Owner, the latter may take coercive measures against the contract holder, a direct payment of the sub- contractor for instance.

**ARTICLE 163:** (1) The main undertaking shall have a maximum deadline of thirty (30) working days as from the date of receipt of the bill to pay the sub-contractor.

(2) Payment of the sub-contractor may be done by the Project Owner when the amount to be paid for the services delivered by only one company is worth ten per cent (10%) or above of the total contract price and its possible additional clauses or when it is proven that the main company uses fraudulent manoeuvres against the sub-contractor.

(3) In case of direct payment by the Project Owner or Delegated Project Owner, the main undertaking shall have a deadline of fifteen (15) working days, as from the date of receipt of the supporting documents providing the basis for the production of the bill to be paid, in order to assume its justified approval or refusal. Once the deadline has expired, the main undertaking shall be deemed to have officially accepted the said documents. The notifications shall be addressed through a registered letter with acknowledgement of receipt or through submission against a signature. The bill shall comply with the commitments in the sub-contracting agreement.

(4) Payments made to sub-contracting undertakings or payments made by sub-contracting undertakings or agencies to third parties as remuneration for a job done inside the Cameroonian territory, shall be made through banking establishments authorised by the Minister in charge of finances.

(5) Sub-contracting undertakings shall buy their insurance from insurance companies based in Cameroon.

**ARTICLE 164:** (1) The amount of a payment on account shall not exceed the amount corresponding to the services relating to that payment after deduction of reimbursed advances and, where necessary, the retention fund. This amount shall be assessed according to provisions of the contract.

(2) In the case of payments on account made according to the technical execution phases, the contract may set the amount of each payment on account as a fixed sum, in the form of a percentage of the initial price of the contract. The deductions in paragraph (1) above shall apply under the same conditions.

**ARTICLE 165:** (1) Payments on account shall take place every month or following a frequency that should be defined by parties, the Project Manager and the representative of the Project Owner.

(2) Payments on account may be spread over the duration of the execution of the contract, according to periodic terms or according to technical execution phases as defined in the contract.

(3) Payments on account shall take place within a maximum deadline of ninety (90) working days as from the date of transmission, to the competent accounting officer of the documents giving entitlement to payment.

(4) The General or Special Administrative Conditions shall specify the time limits allowed for the Contract Manager or, where necessary, the Project Manager to produce the document giving entitlement to payment on account.

(5) In any case, payments on account shall not go beyond sixty (60) working days as from the date on which the payment project is forwarded to the project manager, provided it does not need further correction.

**SUB-SECTION IV**  
**INTEREST ON OVERDUE**  
**PAYMENTS AND PENALTIES**

**ARTICLE 166:** When the failure to pay within the time limit set in the Special Administrative Conditions is attributed to the Project Owner, Delegated Project Owner or accounting officer, the contract holder shall automatically be entitled to interest on overdue payments calculated from the day following the expiry of the said time limit up to the day the payment voucher is issued by the accounting officer.

**ARTICLE 167:** (1) The interest rate on overdue payments shall comply with the borrowing rate of undertakings affiliated to the Bank of Central African States (BEAC) in invitations to tender with a one (1) point surcharge.

(2) For payments to be done in a currency other than the CFA franc, the interest on overdue payment shall be the discount rate of the issuing bank of this currency with a surcharge of one (1) point.

(3) The amount of the interest on overdue payments shall be calculated according to the formula:

$I = M \times (n/360) \times (i)$  where

M = Amount, inclusive of all taxes, due to the holder of the contract

N = Number of calendar days of delay

I = the BEAC intervention rate concerning invitations to tender or the discount rate of the issuing bank of the currency under consideration with a surcharge of one (1) point, as the case may be.

(4) Interest on overdue payments shall not be applied on amounts already including compensations for delayed payments.

(5) Interest on overdue payments shall be liable to taxes.

**ARTICLE 168:** (1) A contractor who shall be responsible for overrunning the contractual time limit shall be liable to pay penalties for delay with the following amounts, except otherwise provided for in the contract:

- a) one two thousandth (1/2000th) of the initial contract price, inclusive of all taxes, per calendar day overrun from the first to the thirtieth day beyond the contractual time-limit set by the contract;
- b) one thousandth (1/1000th) of the initial contract price, all taxes inclusive, per calendar day overrun beyond the thirtieth day.

- (2) For contracts including conditional phases, the time-limits and the amounts to be considered shall be those of the instalment considered.
- (3) The remission of penalties for contractual delay shall only be decided by the Project Owner or the Delegated Project Owner after a favourable opinion of the organ in charge of the regulation of public contracts.
- (4) A copy of the decision remitting the penalties accompanied by the favourable opinion referred to above shall be transmitted to the organ in charge of the regulation of public contracts for information purposes.

**ARTICLE 169:** (1) Independently of penalties for contractual time-limit overrun, the contract may provide for special penalties for the non-respect of technical or security provisions.

- (2) In any case, the cumulative amount of penalties shall not exceed 10% of the amount of the initial contract, all taxes inclusive and its additional clauses under risk of termination, when need be.

## **PART V** **DISPUTES AND SANCTIONS**

### **CHAPTER I** **DISPUTES**

#### **SECTION I** **DISPUTES DURING THE AWARD PHASE**

##### **SUB-SECTION I** **PETITIONS FROM BIDDERS**

**ARTICLE 170:** (1) Any bidder who considers himself aggrieved in the public contracts award procedure may introduce a petition depending on the level of the procedure to either the Project Owner or the Delegated Project Owner or the Petitions Committee.

- (2) In order to be admissible, every petition must indicate a fact or an infringement of this Public Contracts Code and to the regulation relating to contracts award or the consultation file concerned.
- (3) These petitions may be submitted during the following phases:
- phase of the pre-qualification of candidates;
  - between the publication of the tender notice and the opening of bids;
  - at the opening of bids;
  - at the end of the technical offers analysis phase when the bids-opening session is double phased;
  - between the publication of results and the notification of the award.

**ARTICLE 171:** (1) During the pre-qualification phase, petitions may consist of requests

for re-evaluation of the pre-qualification conditions or for the re-evaluation of the decisions or actions taken by the Project Owner or the Delegated Project Owner during the pre-qualification procedure.

(2) Candidates shall have a deadline of five (5) working days before the submission date of the offers and five (5) working days after the opening of bids for pre-qualification to submit their petition to the Project Owner or Delegated Project Owner, with a copy addressed to the Authority in charge of public contracts and to the organ in charge of the regulation of public contracts.

**ARTICLE 172:** (1) Between the publication of the tender notice and the bids-opening session:

- a) the petition shall be addressed to the Project Owner or Delegated Project Owner with a copy to the Authority in charge of public contracts and to the organ in charge of the regulation of public contracts;
- b) it must reach the Project Owner or Delegated Project Owner no later than fourteen (14) working days prior to the bids-opening session;
- c) the Project Owner or Delegated project Owner then shall have five (5) working days to respond. A copy of the response shall be forwarded to the Authority in charge of public contracts and to the organ in charge of the regulation of public contracts;
- d) in case of disagreement between the petitioner and the Project Owner or Delegated Project Owner, the petition shall be brought before the Petitions Committee.
- e) This petition shall not stay execution.

(2) Petitions at this stage may be on:

- a) the conformity of consultation files with regulation;
- b) validated technical specifications;
- c) evaluation criteria;
- d) conditions of publication of the tender notice;
- e) rules regarding the participation of bidders and the required qualifications and guarantees;
- f) the award procedure and validated selection procedure.

**ARTICLE 173:** (1) At the bids opening, petitions shall refer only to the ongoing stage, namely respect of procedures and the regularity of verified documents.

(2) The petition shall be addressed to the Petitions Committee with a copy to the

Project Owner or Delegated Project Owner, to the Chairperson of the Tenders Board concerned, to the organ in charge of the regulation of public contracts and to the Authority in charge of public contracts.

(3) It must reach the Committee within a maximum deadline of three (3) working days after the opening of the bids.

(4) This petition shall not stay execution.

**ARTICLE 174:** (1) At the end of the analysis of technical offers, when the opening of bids is done in two (2) phases, the Project Owner or Delegated Project Owner shall ensure bidders are informed of the results from the analysis before the opening of the financial offers.

(2) Unsuccessful bidders at the end of the evaluation of technical offers may address a petition to the Petitions Committee, with a copy to the Project Owner or Delegated Project Owner, to the Chairman of the Tenders Board concerned and to the Authority in charge of Public contracts.

(3) The petition must reach the Committee within a maximum deadline of three (3) working days after the opening of the financial bids.

**ARTICLE 175:** (1) Between the publication of results and the notification of the award, petitions can only concern the award.

(2) The petition should be addressed to the Petitions Committee with a copy to the Project Owner or the Delegated Project Owner, to the Chairperson of the Tenders Board concerned, to the organ in charge of the regulation of public contracts and the Authority in charge of Public Contracts.

(3) It must reach the Committee within a maximum deadline of five (5) working days after the publication of results.

(4) This petition may lead to a suspension of the procedure depending on the appreciation of the organ in charge of the regulation of public contracts.

(5) The suspension of the procedure shall be lifted by the Authority in charge of public contracts after evaluation of the conclusions of the Petitions Committee.

(6) Except in case of a petition, the award notification shall take place at most fifteen (15) calendar days after the publication of the results.

**ARTICLE 176:** (1) For the petitions referred to in the articles 173, 174, 175 and 176 of this Code, the Petitions Committee shall request the opinion of the organ in charge of the regulation of public contracts which, after examination of the said petition, shall send its conclusions to the Petitions Committee within a maximum deadline of seven (7) calendar days as from the date of the referral.

(2) After the validation of the conclusions of the organ in charge of the regulation of public contracts, the Committee shall submit adequate sanctions proposals to the Authority in charge of public contracts.

(3) The decision of the Authority in charge of public contracts shall apply to both parties.

**ARTICLE 177:** (1) After the publication of the award results, an excerpt of the bid analysis report concerning it shall be given to any bidder on a request

addressed to the Project Owner or Delegated Project Owner.

- (2) Requests should be addressed within the deadlines indicated in articles 172, 173, 174, 175 and 176 of this Code to avoid foreclosure.
- (3) The examination of the petitions may lead to the resumption or to the cancellation of the ongoing procedure.

**SUB-SECTION II**  
**DISAGREEMENTS BETWEEN TENDERS BOARDS AND THE**  
**PROJECT OWNER OR DELEGATED PROJECT OWNER**

**ARTICLE 178:** (1) Where the Project Owner or Delegated project owner does not approve a proposal from the Tenders Board, he is bound to request a re-examination of the file by the Board, stating his own reservations, within a deadline of three (3) working days, as from the date of receipt of the proposal from the Tenders Board concerned.

(2) After the re-examination, the Chairman of the Tenders Board shall inform the Project Owner concerned about the outcome of the new examination.

(3) If the disagreement persists, the Project Owner or Delegated Project Owner shall refer the matter to the Authority in charge of public contracts.

(4) The Authority in charge of public contracts may request the opinion of the organ in charge of the regulation of public contracts which shall have, in this case, a deadline of seven (7) working days to give its opinion.

(5) The contract notification shall be subject to the decision of the Authority in charge of public contracts.

**SUB-SECTION III**  
**DISAGREEMENTS BETWEEN THE CENTRAL CONTRACTS CONTROL**  
**BOARD AND THE PROJECT OWNER OR DELEGATED PROJECT**  
**OWNER**

**ARTICLE 179:** (1) In case of disagreement between the Central Contracts Control Board and the Project Owner or the Delegated Project Owner, the latter shall be bound to request a re-examination of the file by the Central Contracts Control Board stating his own reservations, within a deadline of seven (7) working days as from the date of receipt of the notification of the outcome of the deliberations from the Central Contracts Control Board concerned.

(2) After re-examination, the Chairperson of the Central Contracts Control Board shall notify the outcome to the Project Owner or Delegated Project Owner.

(3) If the disagreement persists, the Project Owner or Delegated project Owner shall notify his final decision to the Central Contracts Control Board within a deadline of five (5) calendar days as from the date of receipt of the notification of the final decision of the Central Contracts Control Board.

(4) Once the deadline is over, the Chairperson of the Central Contracts Control Board shall transmit the file to the Authority in charge of public contracts.

(5) The Authority in charge of public contracts may request the opinion of the organ in charge of the regulation of public contracts which shall have, in this case, a deadline of



seven (7) working days to give out its opinion.

(6) The decision of the Authority in charge of public contracts shall apply to both (2) parties.

## **SECTION II** **DISPUTES DURING THE EXECUTION** **PHASE**

### **SUB-SECTION I** **TERMINATION**

#### **Paragraph 1** **Preliminaries to termination**

**ARTICLE 180:** (1) Where the Administration's contracting partner does not comply with the provisions of the contract or the related administrative orders, as the case may be, the Project Owner shall give the contractor a formal notice to comply with the provisions within a determined time limit.

(2) This time limit shall not be less than twenty-one (21) days except a waiver is provided for in the Special Administrative Conditions.

(3) The application of paragraphs (1) and (2) above shall have no incidence on penalties for delays.

**ARTICLE 181:** (1) Failure by the Administration's contracting partner to comply with the provisions of article 180 above, the Project Owner or Delegated Project Owner may:

- a) either prescribe full or partial direct execution at the expense of the said Administration's contracting partner;
- b) or decide to terminate the contract at the fault, expense and risk of the said Administration's contracting partner;

(2) The terms and conditions for the termination of public contracts as well as the effect of such termination shall be set in the General Administrative Conditions, subject to the provisions of articles 185, 186, and 187 of this Code.

#### **Paragraph 2** **Grounds for termination**

**ARTICLE 182:** The Project Owner or Delegated Project Owner shall automatically terminate a contract in one of the following cases:

- a) death of the contract holder. In this case, the Project Owner may, if necessary authorise the acceptance of offers made by the rightful claimants for the continuation of the services ,
- b) bankruptcy of the contract holder. In this case, the Project Owner may

accept, if necessary, offers that may be made by the creditors for the continuation of the services;

- c) winding up, if the Administration's contracting partner is not authorised by the court to continue running his undertaking;
- d) in case of sub-contracting, co-contracting and subsidiary orders, without the prior authorisation of the Project Owner or Delegated Project owner;
- e) default by the Administration's contracting partner duly established and notified by the Project Owner or Delegated Project Owner;
- f) failure to comply with labour laws;
- g) considerable price variation under the conditions laid down by the General Administrative Conditions, following changes in economic conditions or in the initial quantities of the contract;
- h) duly established fraudulent manoeuvres and corruption.

**ARTICLE 183:** Notwithstanding the provisions of article 182 of this Code, the Project Owner or Delegated Project Owner may, in the case of absolute necessity or force majeure and after the opinion of the Authority in charge of public contracts, decide on the termination of a contract in the absence of any default on the part of the Administration's contracting partner, without prejudice to damages that can be claimed by the latter.

### **Paragraph 3** **Consequences of termination**

**ARTICLE 184:** (1) The Administration's contracting partner whose contract is terminated for the reasons referred to in article 182 (d), (e), (f) and (h), of this Code, may not, except by special waiver granted by the Authority in charge of public contracts, tender for a new public contract before a period of two (2) years from the date of notification of the termination.

In case of default during the execution of services, this prohibition shall apply without any prejudice to the payment by the Administration of the services already provided.

(2) Where the prohibition referred to in paragraph (1) above concerns a natural person or an undertaking under sole ownership, it shall equally apply to any other undertaking eventually created after the said period by the incriminated person or, in the case of an undertaking under sole ownership by the manager.

This measure shall apply to the manager with regard to limited liability companies.

(3) The Project Owner or Delegated Project Owner shall be bound to forward termination decisions to the organ in charge of the regulation of public contracts in view, notably, of updating the data base of actors who have been sanctioned.

**ARTICLE 185:** Any termination done in accordance with the provisions of article 182 above shall preclude the application of the provisions of the article 184 of this Code.

## **SUB-SECTION II**

### **PETITIONS BY CONTRACTING PARTNERS**

**ARTICLE 186:** (1) Any Administration's contracting partner who feels aggrieved in the execution of his contract may introduce a non-judicial petition, either to the Project Owner or Delegated Project Owner or to the Authority in charge of public contracts.

(2) The Authority in charge of public contracts shall state his decision based on a proposal from the Petitions Committee and after prior opinion of the organ in charge of the regulation of public contracts, where necessary.

## **SUB-SECTION III**

### **AMICABLE SETTLEMENT OF DISPUTES**

**ARTICLE 187:** (1) Disputes resulting from public contracts may, as the need arises, be the subject of an attempt at amicable settlement.

(2) The attempt at amicable settlement provided for in paragraph (1) above shall have no incidence on the common law settlement procedure, except by special waiver resulting from loan agreements or conventions or other international agreements.

## **CHAPTER II**

### **SANCTIONS**

**ARTICLE 188:** (1) Shall be liable to the sanctions provided for by the laws in force, any procedure carried out in violation of the provisions of this Code, as well as those responsible for malpractices in the award of public contracts.

(2) Where violations of the provisions of this Code shall be considered as misappropriation of public funds, the authors shall be liable to the sanctions provided for in section 184 of the Penal Code.

## **SECTION I**

### **SANCTIONS FOR PROCEDURES**

**ARTICLE 189:** (1) The organ in charge of the regulation of public contracts, after consideration of the documents on public contracts forwarded to it, shall propose regulatory decisions and inform the actors concerned within the applicable time limits as far the following measures are concerned:

- a) amendments of invitations to tender and award releases;
- b) the respect of procedures and regulatory time limits;
- c) the observance of thresholds of jurisdiction of public tenders boards;

- d) prevention of the splitting of public contracts;
- e) transmission of public contracts documents;
- f) consideration of the technical opinions of public contracts award and control bodies;
- g) use of standard public contracts documents;
- h) the execution of the missions of the Independent Observer;
- i) the taking of preventive measures, in case of supposed irregular procedure, while waiting for the conclusion of the necessary investigations and the decision of the Authority in charge of public contracts.

(2) The regulatory decisions referred to in paragraph (1) above must be taken into account by those concerned.

**ARTICLE 190:** (1) Any contract awarded in violation of regulations or disregard of the rules of transparency and the principle of equity shall be subject to cancellation by the Authority in charge of public contracts.

## **SECTION II** **SANCTIONS APPLICABLE TO ACTORS**

### **SUB-SECTION I** **SANCTIONS APPLICABLE TO ACTORS OF THE PRIVATE SECTOR**

**ARTICLE 191:** (1) Without prejudice to the sanctions provided by other control bodies, the Administration's contracting partner shall be liable, on a decision of the Authority in charge of public contracts and after consultation, where necessary, of the organ in charge of the regulation of public contracts, to sanctions listed in paragraph (2) of this article.

(2) The following sanctions may be decided and, according to the case, cumulatively:

- a) the seizure of the securities provided by the offender within the framework of the incriminated procedures of the invitation to tender;
- b) exclusion from public procurement for a fixed period according to the infringement committed;
- c) withdrawal of the certificate of categorisation.

(3) Pursuant to the provisions of article 185 of this Code, exclusion from public procurement shall not go beyond two (2) years. In case the offender, natural person or legal entity, commits new infringements of public contracts instruments, a decision of final exclusion may be taken against him by competent jurisdictions.

(4) The organ in charge of the regulation of public contracts shall regularly draw up a list of natural persons and legal entities that are excluded from participation in any public procurement. This list shall be regularly updated and made public in the Public Contracts Journal published by the organ in charge of the

regulation of public contracts.

**ARTICLE 192:** The Administration's contracting partner found guilty of violation of provisions relating to hygiene, health, security and environment protection shall be liable to sanctions provided for by the laws in force, without prejudice to the termination, the prohibition to tender and/or the deduction on payments imposed after a formal notice.

**ARTICLE 193:** The Authority in charge of public contracts may, as a preventive measure, take the decision to prohibit bidding during a period that cannot exceed two (2) years, against any bidder or Administration's contracting partner because of influence peddling, conflict of interest, insider trading, complicity, fraud, corruption or document forgery in his offer, without prejudice to criminal prosecution that could be brought against him.

## **SUB-SECTION II**

### **SANCTIONS APPLICABLE TO ACTORS OF THE PUBLIC SECTOR**

**ARTICLE 194:** The Authority in charge of public contracts may take against public sector actors found guilty of violation of provisions of this Code, a decision to prohibit any participation in the award phase as well as in the follow-up of the execution of public contracts during a period that shall not exceed two (2) years.

**ARTICLE 195:** (1) Chairpersons, members, secretaries, Experts of Tenders Boards and of Bids Analysis Sub-Committees, as well as Independent Observers and Chairpersons and members of Contracts Control Boards shall be bound by professional secrecy.

(2) In case of defaults noted in the way they perform their functions, they can be excluded from the public contracts system during a period that shall not exceed two (2) years, without prejudice to the sanctions provided for in the laws and regulations in force

## **SECTION III** **ETHICAL PRINCIPLES**

### **SUB-SECTION I** **COMMON PROVISIONS**

**ARTICLE 196:** Public agents, bidders and contracts holders, as well as any other person that takes part, at any level, in the different procurement stages that are the award process, the execution, the control and contracts regulation, shall be subject to the provisions in the laws and regulations prohibiting corruption, fraudulent manoeuvres, collusive, coercive or obstructive practices, conflicts of interest, insider trading and complicity.

### **SUB-SECTION II** **CORRUPTION ACTS AND FRAUDULENT MANOEUVRES**

**ARTICLE 197:** (1) Shall be guilty of an act of corruption whoever offers, gives, requests for or accepts any advantage in view of influencing the action of a public agent during

the award or execution phase of a contract.

(2) Shall be guilty of “fraudulent manoeuvres” whoever deforms or distorts facts in order to influence the award or the execution of a contract.

(3) Shall be guilty of “collusive practices” two or more bidders who agree to artificially maintain the prices of their offers at a level that does not correspond to those that would actually be proposed in fair competition.

(4) Shall be guilty of “coercive practices”, whoever harms people or damages their goods, or makes direct or indirect threats towards them, in order to influence their actions during the award or execution of a contract.

(5) Shall be guilty of “obstructive practices”, whoever commits offences aiming at destroying, forging, deteriorating or dissimulating proofs on which an investigation may rely, or any wrong declaration done to investigators or any threat, harassment or intimidation against whoever in a bid to prevent him from revealing information relating to an investigation or continuing it.

## **SUB-SECTION II**

### **INSIDER TRADING AND CONFLICT OF INTEREST**

**ARTICLE 198:** (1) Consultants who contributed to the preparation of a consultation file shall not take part in that consultation.

(2) No public body of an industrial and commercial nature placed under the authority of a Contracting Authority shall be admitted to tender within the framework of a consultation launched by the latter.

(3) An Independent Observer shall not be authorised to provide goods, works or services to the administration where he works during his term.

**ARTICLE 199:** (1) There shall be a conflict of interest when a contract holder or a supervisor of the procedures for the award and/or execution of a contract may draw profit directly or indirectly from a contract concluded by the Project Owner or Delegated Project Owner, from an assignment or from any situation in which he has a personal or a financial profit which is enough to compromise his impartiality in the execution of his functions or which may negatively affect his judgment.

(2) Chairpersons, members, secretaries and Experts of Tenders Boards, Bids Analysis Sub-Committees, officials in charge of public contracts shall be obliged to uphold professional reserve and discretion.

They shall abstain from any action likely to compromise their impartiality and in all cases, shall have no financial, personal or other interest related to the contract under examination.

(3) In case of conflict of interest, Chairpersons, Experts and members of Tenders Boards and of Contracts Control Boards as well as those of Bids Analysis Sub-Committees and Independent Observers shall inform the Project Owner or the Chairperson of the Tenders Board about it, with a copy to the organ in charge of the regulation of public contracts, at the risk of sanctions provided for by the laws in force. In this case, they shall be replaced for the contracts concerned.

(4) In the execution phase, the contract holder shall inform the Project Owner in writing about any conflict of interest that may arise. In that case, he shall propose a replacement solution to the Project Owner.

### **SUB-SECTION III** **COMPLICITY**

**ARTICLE 200:** (1) Any supervisor of the procedures for the award or the execution of a contract shall be liable in case of complicity.

(2) According to this Code, complicity shall mean:

- a) omission or negligence to perform controls or to give the prescribed technical opinion;
- b) voluntary abstention to bring to the knowledge of the Project Owner or Delegated Project Owner, irregularities related to violations noticed during their intervention.

(3) Shall also be liable for complicity in the following cases:

- a) any declaration or confirmation of false information on the situation of the public or semi-public administration or organ in charge of monitoring, evaluation or supervision;
- b) the earning of undue benefits or of a nature likely to bear on the impartiality of the credit supervisor;
- c) any transaction with the body in charge of the monitoring of any violation of legal or regulatory incompatibilities in force.

### **PART VI** **INCOMPATIBILITIES AND SUBSTITUTION**

## **CHAPTER I**

### **INCOMPATIBILITIES**

**ARTICLE 201:** (1) No one shall chair more than one Tenders Board or Central Contracts Control Board.

(2) No one shall be member of more than two (2) Tenders Boards or of more than two (2) Central Contracts Control Board.

(3) No one shall be the secretary of more than one Tenders Board or Central Contracts Control Board.

(4) No substantive member or Secretary of a Tenders Board shall be member of a Sub-Committee for the analysis of bids.

(5) No one shall be Expert for an Analysis Sub-Committee and Expert for the Central Contracts Control Board for the same file.

(6) No one shall concurrently be member of the Petitions Committee and of a Tenders Board or a Central Contracts Control Board, or of a Bids Analysis Sub-Committee.

**ARTICLE 202:** The status of personnel of the organ in charge of the regulation of public contracts shall be incompatible with that of Chairperson, member or secretary of a Tenders Board, except in its own Tenders Board.

## **CHAPTER II**

### **REPLACEMENT**

**ARTICLE 203:** (1) Except for the award, signature and termination of a contract, the Project Owner or Delegated Project Owner may delegate his signature or some of his duties to his collaborators, under forms and conditions provided for by the regulations in force.

(2) A copy of the delegation decision shall be forwarded to the Authority in charge of public contracts and to the organ in charge of the regulation of public contracts, as well as to the competent Tenders Board or Central Contracts Control Board and to any other authority concerned, for taking into account.

**ARTICLE 204:** (1) Where the Chairperson of a Tenders Board or a Central Contracts Control Board is not available for a whole part of the session, he shall designate a board member to replace him to chair the meeting.

(2) Where the Chairperson of the Tenders Board or of the Central Contract Control Board is not available for a period that does not exceed thirty (30) calendar days, he shall designate a board member to substitute him to chair meetings and shall inform the Authority in charge of public contracts about that; he may endorse the replacement or not.

(3) A copy of the replacement decision shall be forwarded to the Project Owner or Delegated Project Owner, to the Governor of the Region or the Senior Divisional Officer, according to the situation.



(4) When the Chairperson of the Tenders Board or of the Central Contract Control Board is not available for a period that does not exceed thirty (30) calendar days, he shall inform the Authority in charge of public contracts about that, who shall appoint an interim chairperson.

(5) The ad hoc or interim Chairperson shall exercise his responsibilities with full rights as provided for by the laws in force.

**ARTICLE 205:** (1) Where a member of a Tenders Board or a Central Contracts Control Board is temporally absent, his supervisory authority shall appoint an acting member by letter addressed to the Chairperson of the said board.

(2) Where a secretary of a Tenders Board or a Central Contracts Control Board is temporally absent, the Project Owner or Delegated Project Owner, the Governor or the Senior Divisional Officer, as the case may be, shall appoint an ad hoc secretary.

(3) The acting member's term shall automatically end with the return of the substantive member.

## **PART VII**

### **SUNDRY, TRANSITIONAL AND FINAL PROVISIONS**

**ARTICLE 206:** (1) Ongoing consultations shall remain governed by the procedures that were applicable at the time of their launching.

(2) Contracts that are currently being executed shall be subject to, if necessary, an additional clause in order to comply with the provisions of this Code.

**ARTICLE 207:** All instruments prior to this Decree relating to the Public Contracts Code, setting up, duties, organisation and functioning of Tenders Boards are heretofore abrogated, especially:

- Decree No. 2004/275 of 24 September 2004 to institute Public Contracts Code;
- Decree No. 2012/074 of 8 March 2012 relating to the setting up, organisation and functioning of Tenders Boards;
- Decree No. 2013/271 of 5 August 2013 amending and supplementing some provisions of the decree of 8 March 2012 referred to above;
- contrary provisions to Decree No. 2012/075 of 8 Mars 2012 relating to the organisation of the Ministry of Public Contracts..

**ARTICLE 208:** This Decree shall be registered and published according to the procedure of urgency and inserted in the Official Gazette in English and French./-

Yaounde, 20 June 2018

**Paul BIYA**  
**PRESIDENT OF THE REPUBLIC**