

DECREE N° 2018/366
OF 20 JUNE 2018
TO INSTITUTE THE

PUBLIC CONTRACTS CODE



MINISTRY OF PUBLIC
CONTRACTS

REPUBLIC OF CAMEROON
Ministry of Public Contracts

www.minmap.cm

**Decree No. 2018/366 of 20 June 2018 to institute the
Public Contracts Code**

THE PRESIDENT OF THE REPUBLIC,

- Mindful of** of the Constitution;
- Mindful of** Law No. 73/7 of 7 December 1973 relating to 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, local authorities and State undertakings, as amended by Law No. 76/4 of 8 July 1976;
- Mindful of** Law No. 98/13 of 14 July 1998 relating to competition;
- Mindful of** Law No. 2004/18 of 22 July 2004 to lay down rules applicable to councils;
- Mindful of** Law No. 2004/19 of 22 July 2004 to lay down rules applicable to regions;
- Mindful of** Law No. 2007/6 of 26 December 2007 relating to the fiscal regime of the State;
- Mindful of** Law No. 2010/12 of 21 December 2010 relating to cyber security and cyber criminality in Cameroon;
- Mindful of** Law No. 2010/13 of 21 December 2010 to regulate electronic communication in Cameroon;
- Mindful of** Law No. 2010/21 of 21 December 2010 on electronic commerce in Cameroon;
- Mindful of** Law No. 2017/10 of 12 July 2017 to lay down the general rules and regulations governing public establishments;
- Mindful of** Decree No. 2001/48 of 23 February 2001 relating to the setting up, organization and functioning of the Public Contracts Regulatory Agency;



- Mindful of** Decree No. 2008/376 of 12 November 2008 on the administrative organization of the Republic of Cameroon;
- Mindful of** Decree No. 2011/1521/PM of 15 June 2011 to lay down conditions for the implementation of Law No. 2010/21 of 21 December 2010 on electronic commerce in Cameroon;
- Mindful of** Decree No. 2011/408 of 9 December 2011 to organize the Government, as amended and supplemented by Decree No. 2018/190 of 2 March 2018,

HEREBY DECREES AS FOLLOWS:PART I

GENERAL PROVISIONS

CHAPTER I

PURPOSE, BASIC PRINCIPLES AND SCOPE OF IMPLEMENTATION

ARTICLE 1: (1) This decree institutes the Public Contracts Code.

- (2) It lays down the rules applicable to the preparation, award, execution, control and regulation of public contracts.

ARTICLE 2: The rules laid down by this Public Contracts Code shall be based on the principles of free access to public procurement, equal treatment of bidders, transparent procedures, efficiency and integrity.

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

- (a) the Statebudget;
- (b) external, bilateral or multilateral assistancefunds;
- (c) State-guaranteedloans;
- (d) the budget of a public establishment or a local and regionalauthority.

(2) The provisions of this Code shall also applyto:

- (a) contracts awarded by private law corporate bodies acting on behalf of the State and itsentities;
- (b) contracts awarded by private law persons, where such contracts are financed or guaranteed by the State, or a public law corporatebody;
- (c) contracts concluded between public law corporate bodies under the conditions laid down by thisdecree;



- (d) public contracts awarded within the framework of a coordination or group of orders or by a purchasing pool procuring supplies and/or services for project owners, or concluded under framework agreements and works, supplies and servicecontracts.
- (3) Special provisions applicable to contracts awarded by embassies and consular posts shall be governed by a separate instrument issued by the Authority in charge of PublicContracts.

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

- (2) For contracts financed with external, bilateral or multilateral assistance funds, the provisions of the financing agreements shall, where necessary, specify the rules applicable.
- (3) The provisions of this Code shall not applyto:
 - (a) procurement through administrative purchase orders whose amounts are less than 5 000 000 (five million) CFA francs;
 - (b) contracts whose purpose is to procure or rent buildings orland;
 - (c) the procurement of downstream petroleum products intended only for use in administrative vehicles whose procurement is subject to the application of the official price in force indicated on the list of petroleum products published periodically by the competentauthorities;
 - (d) contracts awarded by publicenterprises;
 - (e) special contracts defined in Article 71 of this Public ContractsCode;
 - (f) partnershipcontracts;
 - (g) works executed under full Statecontrol.

CHAPTER I DEFINITIONS

ARTICLE 5: Within the meaning of this Code, the following definitions shall apply:

- (a) **Administration's contracting partner or contract holder:** any natural person or corporate body party to the contract, responsible for the execution of the services provided for in thecontract;
- (b) **Allottee:** any natural person or corporate body party to the contract, responsible for providing the services provided for in the contract, as



well as their duly appointed representative(s), staff, successor(s) and/or agent(s). The allottee is the Administration's contracting partner.

- (c) **Authority in charge of public contracts:** authority heading the competent government service in respect of public contracts;
- (d) **Bid evaluation sub-committee:** ad hoc committee set up by the Tenders Board for the technical and financial evaluation and ranking of bids;
- (e) **Bid:** written deed whereby a bidder for a public contract makes known his conditions and undertakes to comply with the applicable specifications;
- (f) **Business grouping:** a group of enterprises or service providers bound by a single agreement and represented by one of them, acting as common agent. The business grouping may be joint and/or several;
- (g) **Contract amendment:** contractual deed amending or supplementing certain clauses of the initial contract to adapt it to developments subsequent to its signature;
- (h) **Contract amount:** total amount of the expenses and remuneration for services forming the subject of the contract, subject to any addition or deduction which may be done by virtue of the provisions of the contract;
- (i) **Contract Engineer:** public law natural person or corporate body accredited by the Project Owner or the Delegated Project Owner to monitor contract execution. He is responsible for technical and financial monitoring. As such, he assesses, decides and gives instructions having no financial incidence and reports to the Contract Manager;
- (j) **Contract Manager:** natural person accredited by the Project Owner or the Delegated Project Owner to provide general administrative, financial and technical assistance at the definition, preparation, execution and acceptance stages of the services under the contract. He oversees the general management of the execution of services, decides on all the technical and financial provisions and represents the Project Owner or the Delegated Project Owner before dispute settlement bodies;
- (k) **Contract:** all the documents referred to in this Code to which reference is expressly made in the general administrative clauses and special administrative clauses of the contract. It shall be a single document written on both sides, approved by the contract holder and signed by the Contracting Authority;
- (l) **Contracting authority:** natural person authorized to manage the contracting process and sign the related contracts. They are project owners and delegated project owners.
- (m) **Delegated Project Owner:** person acting as representative of the Project Owner and performing some of the duties of the latter. They include Regional Governors, Senior Divisional Officers and Heads of Cameroon's diplomatic missions abroad, empowered to conclude and sign contracts



financed from votes delegated by a Project Owner and, where applicable, the manager of a project benefiting from external funding;

- (n) **Expert:** natural person approved by the public contracts regulatory body to provide technical assistance to stakeholders in the domain of public contracts;
- (o) **Follow-up and Technical Validation Committee:** a committee comprising members chosen by virtue of their domain of expertise and responsible for

monitoring and validating the services provided within the scope of intellectual service contracts worth at least 100 000 000 (one hundred million) CFA francs;

- (p) **Foreign aid:** grant or loan from a foreign country or financial institution;
- (q) **Grassroots community organization:** group of local populations in the form of a legalized association or civil society organization aimed at achieving local development and which executes labour-intensive works;
- (r) **Independent auditor:** audit firm of established reputation recruited through restricted competitive bidding by the contracts regulatory body to conduct ex-post audit of contracts signed over the year ended and executed or being executed;
- (s) **Independent observer:** consultant recruited by the Administration to ensure compliance with regulations, transparency rules and principles of equity in public procurement;
- (t) **Intellectual service contract:** contract intended mainly for the provision of intellectual services whose predominant element is not physically quantifiable or expendable;
- (u) **Jobbing order:** a public contract worth at least 5 000 000 (five million) and less than 50 000 000 (fifty million) CFA francs;
- (v) **Labour-intensive approach (HIMO):** approach to the execution of works which combines, in an optimum manner, the use of light equipment with resources available locally in terms of local manpower and materials, whenever technically feasible and economically profitable;
- (w) **Offer:** all the administrative, technical and financial documents that constitute the proposal of the bidder;
- (x) **Project Manager:** public or private law natural person or corporate body designated 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 under the contract;
- (y) **Project maturity:** process during which a project idea is developed based on appropriate studies to express as accurately as possible the



requirements for its implementation. It involves preparing all the elements that help to take into account all the administrative, technical, financial, socio-economic and environmental aspects of projects;

- (z) **Project Owner:** minister or person ranking as such, chief executive of a regional or local authority, general manager and manager of a public establishment, representing the beneficiary of the services provided for in the contract;
- (aa) **Public contract:** written document concluded in accordance with the provisions of this Code by which a contractor, supplier or service provider enters into an agreement with the State, a regional or local authority or a public establishment to carry out work or to supply goods or services against payment;
- (bb) **Public Contracts Petitions Review Committee:** entity set up within the public contracts regulatory body to examine petitions from bidders who feel aggrieved and to propose appropriate measures to the Authority in charge of Public Contracts, where necessary;
- (cc) **Purchase order:** procedure for procuring goods or services whose amount is less than 5 000 000 (five million) CFA francs;
- (dd) **Purchasing pool:** public or private law entity subject to the provisions contained herein which procures supplies or services intended for contracting authorities;
- (ee) **Quantifiable service contract:** service contract concerning, among other things, security services, cleaning or maintenance of public buildings or green spaces, repair or maintenance of office furniture and equipment or computer software and hardware, insurance, excluding health insurance, etc.;
- (ff) **Request for quotation:** simplified procedure for the consultation of enterprises for the award of some jobbing orders;
- (gg) **Service contract:** contract concluded with service providers for the provision of intangible services whose predominant element is quantifiable or unquantifiable;
- (hh) **Service provider:** natural person or corporate body, allottee of a public contract;
- (ii) **Service:** works, supplies and services which are the subject of a contract;
- (jj) **Special contract:** contract which does not fully or partially comply with the provisions of contracts awarded through competitive bidding or negotiated contract in view of their specificity mainly related to security;
- (kk) **State control:** process by which the Administration decides to execute works using its own material and human resources. The Project Owner is also the Project Manager. It deals directly with suppliers and its budget covers all the economic and financial risks. State control may be total, concerning all the works to be executed or partial, concerning only part of the works;

- (ll) **Structure:** any construction, facility, building, assembly and, in general, any tangible property created or transformed through the execution of works;
- (mm) **Supply contract:** contract concluded with suppliers for the purchase, lease or hire-purchase of a product or equipment;
- (nn) **Unquantifiable service contract:** service contract concerning, among other things, the delegation of public services, health insurance, advertisement, auditing of accounts, organization of training seminars, etc.;
- (oo) **Works contract:** contract concluded with contractors for the construction, reconstruction, demolition, repair and renovation of any building or structure, including worksite preparation, earthworks, installation of equipment or materials, decoration and finishing, as well as ancillary services, where the value of such services does not exceed that of the works themselves.

PART II ORGANIZATION OF THE PUBLIC CONTRACTS SYSTEM

CHAPTER I PUBLIC CONTRACTS AWARD BODIES

SECTION I

PROJECT OWNERS AND DELEGATED PROJECT OWNERS

ARTICLE 6: (1) The preparation of the procedure and award of a public contract shall be incumbent on the Project Owner, who shall be a natural person heading a ministry or similar entity, a regional and local authority, or a public establishment benefitting from the services provided for in the contract.

As such, he shall be responsible for:

- (a) carrying out preliminary studies and, in conjunction with the relevant government services, ensuring the maturity of projects to be included in the budget;
- (b) preparing the draft contract award and execution plan;
- (c) providing funds;
- (d) preparing tender documents;
- (e) publishing invitations to tender;
- (f) awarding contracts;
- (g) signing and notifying contracts;



- (h) terminating publiccontracts;
 - (i) submitting periodic contract award and execution reports to the Ministry in charge of public contracts and to the public contracts regulatorybody.
- (2) A private law corporate body receiving financial support or financial guarantee derived from public resources shall also be considered as a 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 operating in his name and on his behalf, all or part of the following duties:

- (a) definition of the administrative and technical conditions under which the relevant project will be implemented;
 - (b) receipt of bids;
 - (c) organization and conduct of the contract award procedure up to the signing thereof;
 - (d) management of contracts awarded in the name and on behalf of the Project Owner;
 - (e) payment of allottees;
 - (f) project acceptance;
 - (g) implementation of all actions related to the above-mentioned duties.
- (2) Besides regional or divisional delegates of government services and public establishments that are beneficiaries of services, delegated project owners shall be heads of Cameroon's diplomatic missions abroad, heads of purchasing pools set up for bulk orders and centralized purchases, as well as heads of project units receiving external financing.
- (3) The relations between the Project Owner and the Delegated Project Owner shall be governed by an agreement or any other authorization which, among other things, provides for the duties assigned to the Delegated Project Owner, as well as conditions for the technical, financial and accounting control carried out by the Project Owner at various stages of the project, except regional or divisional delegates of government services and public establishments.
- (4) The establishment, organization and functioning of purchasing pools shall be laid down by a separate instrument of the Authority in charge of publiccontracts.



SECTION II INTERNAL PUBLIC CONTRACTS ADMINISTRATIVE MANAGEMENT ENTITIES

ARTICLE 8: (1) Internal public contracts administrative management entities shall be established under Project Owners and Delegated Project Owners to provide assistance in the discharge of their duties, particularly during:

- (a) project maturation;
 - (b) the preparation and monitoring of contract award plans;
 - (c) the preparation of draft tender documents in conjunction with the technical services of the Project Owner or the Delegated Project Owner concerned;
 - (d) receipt of bids;
 - (e) the finalization of draft contracts and contract amendments for approval;
 - (f) the preparation of project introductory notes;
 - (g) the filing of documents;
 - (h) the transmission of documents produced during the award and execution of public contracts;
 - (i) the drafting of quarterly, half-yearly and annual contract award and execution reports.
- (2) The functioning of internal public contracts administrative management entities shall be organized by a separate instrument.

SECTION II TENDERS BOARDS

SUB-SECTION I DUTIES

ARTICLE 9: Tenders boards shall be technical support bodies set up under Project Owners, Delegated Project Owners, Regional Governors and Senior Divisional Officers for the award of public contracts worth at least 5 000 000 (five million) CFA francs.

As such, they shall:

- (a) examine and give a technical opinion on draft tender files and requests for quotation prepared by Project Owners or Delegated Project Owners;



- (b) examine and, where necessary, adopt rating grids before the opening of bids;
- (c) open bids;
- (d) set up bid evaluation sub-committees;
- (e) prepare, where necessary, documents to be submitted to Central Contracts Control Boards for consideration;
- (f) make contract award proposals to Project Owners or Delegated Project Owners;
- (g) examine and give a technical opinion on draft contract amendments and on draft contracts awarded by mutual agreement.

ARTICLE 10: Tenders boards shall be established by the Authority in charge of public contracts and comprise the following:

- (a) Internal Tenders Boards placed under project owners;
 - (b) Regional Tenders Boards placed under Regional Governors for contracts to be financed with votes delegated to the Region;
 - (c) Divisional Tenders Boards placed under Senior Divisional Officers for contracts to be financed with votes delegated to divisions and for the contracts of regional and local authorities without 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, by virtue of the volume of activities, the nature of the services or the location of these services.
- (3) The Authority in charge of public contracts may set up special tenders boards under some project unit heads, depending on financing conditions, and under some heads of Cameroon's diplomatic missions abroad.

SUB-SECTION II

COMPOSITION OF TENDERS BOARDS

ARTICLE 11: The Internal Tenders Boards placed under Project Owners shall be composed as follows:

- (a) For Project Owners placed under ministries and similar entities:
 - a chairperson appointed by the Authority in charge of public contracts;
 - a representative of the Project Owner concerned;
 - a representative of the Ministry in charge of public contracts;
 - a representative of the Ministry in charge of public investments;



- a representative of the Ministry of Finance;
 - a secretary appointed by the Project Owner from among the staff of the internal contracts administrative management entity.
- (b) For Project Owners placed under public establishments of local and regional authorities:
- a chairperson appointed by the Authority in charge of public contracts;
 - a representative of the Project Owner concerned;
 - a representative of the Ministry in charge of public contracts;
 - a representative of the technical supervisory ministry;
 - a representative of the Ministry of Finance;
 - a secretary appointed by the Project Owner from among the staff of the internal contracts administrative management entity.

ARTICLE 12: (1) Regional Tenders Boards shall be composed as follows:

- a chairperson appointed by the Authority in charge of public contracts, on the proposal of the Regional Governor;
 - a representative of the Ministry in charge of public contracts;
 - a representative of the Ministry in charge of finance;
 - a representative of the Ministry in charge of public investments;
 - a secretary appointed by the Regional Governor.
- (2) A representative of the Delegated Project Owner for contracts financed with votes delegated to regions shall attend Regional Tenders Board deliberations in a decision-making capacity.

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

- a chairperson appointed by the Authority in charge of public contracts, on the proposal of the Senior Divisional Officer;
 - a representative of the Ministry in charge of public contracts;
 - a representative of the Ministry in charge of finance;
 - a representative of the Ministry in charge of public investments;
 - a secretary appointed by the Senior Divisional Officer.
- (2) A representative of the Project Owner for contracts that fall within the remit of regional and local authorities without tenders boards, or of the Delegated Project Owner for contracts financed with votes delegated to the Division, shall take part in Divisional Tenders Board deliberations in a decision-making capacity.



ARTICLE 14: The composition and duties of the special tenders boards referred to in Article 10(3) above shall be laid down by their constituent instruments.

ARTICLE 15: (1) Chairpersons and members of tenders boards shall be chosen from among personalities of good moral standing with a mastery of public contract regulations.

(2) Chairpersons of tenders boards shall be appointed for a two-year term, renewable once. However, their duties may be terminated at any time, in the event of proven misconduct.

(3) In addition, chairpersons should be chosen, as much as possible, based on their place of residence.

ARTICLE 16: (1) The composition of internal or special tenders boards shall be established by decision of the Project Owner or the Delegated Project Owner, as the case maybe.

(2) The composition of regional or divisional tenders boards shall be established by decision of the Regional Governor or the Senior Divisional Officer, as the case may be.

(3) The instrument establishing the composition of a tenders board shall be forwarded to the Ministry in charge of public contracts and to the public contracts regulating body by the relevant Project Owner, Delegated Project Owner, Regional Governor or Senior Divisional Officer, as the case maybe.

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 2 (two) members, the secretary and the independent observer, where necessary.

(2) Where the independent observer does not respond to a convening letter duly sent within the prescribed time, the tenders board may validly deliberate.

(3) Tenders board resolutions shall be taken by a simple majority of members present. In the event of a tie, the Chairperson shall have the casting vote.

(4) No quorum shall be required where a tenders board meets to open bids. However, at this stage, the presence of the Board Chairperson and Secretary shall be mandatory.

- (5) The file shall be presented to the tenders board by a representative of the Project Owner or the Delegated Project Owner with a good knowledge of the project.
- (6) During consideration of the bid evaluation report, the file shall be presented by the Chairperson of the Bid Evaluation Sub-committee or a member of the said sub-committee duly authorized by the Chairperson.

ARTICLE 18: (1) The tenders board shall submit its award proposal to the Project Owner or the Delegated Project Owner within a maximum of 21 (twenty-one) working days from the date of opening of bids, including the time limit allowed the Bid Evaluation Sub-committee to do its work.

- (2) This time limit may be reduced to 10 (ten) days in the event of an emergency, or extended to 30 (thirty) days for cases where bids are opened in two phases.
- (3) The time limits referred to in (1) and (2) above shall not include the period granted to bidders in the event of a request for clarification.

ARTICLE 19: (1) The tenders board shall meet when 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;
- fix the date, time and venue of each session;
- co-sign the minutes of each session with the Board Secretary;
- prepare and submit a quarterly progress report to the Ministry in charge of public contracts and the public contracts regulatory body;
- have the Secretary forward, within 72 (seventy-two) hours after the end of the tenders board session, all documents concerning files processed to the public contracts regulatory body, for use, preservation and filing. These documents shall include:
 - attendance sheets;
 - minutes of sessions;
 - adopted bid evaluation reports;
 - the memorandum of members who did not sign the evaluation report or the summary report, where applicable;
 - the conclusions of deliberations on the award proposals made by the Bid Evaluation Sub-committee;
 - petitions by bidders and related responses, where applicable;
 - copies of newspapers that published the tender notice and any addenda to tender files.



- (2) Convening notices and files to be examined by a tenders board must reach members and the independent observer no later than 48 (forty-eight) hours before the date of the meeting.
- (3) The Project Owner or the Delegated Project Owner shall forward to the public contract regulatory body, for conservation and filing, public contract documents under its jurisdiction within the following deadlines:
 - 48 (forty-eight) hours for tender notices, award results, contracts and contract amendments after they have been signed;
 - 72 (seventy-two) hours for any other document.
- (4) The Chairperson of the tenders board shall provide the public contracts regulatory body with a copy of the bid of each bidder initialled by him at the end of the bid opening session.
- (5) The Chairperson of a tenders board may invite any person by virtue of their competence on agenda items to take part in board deliberations in an advisory capacity.

ARTICLE 20: Under the authority of the Chairperson, the Secretary of the tenders board shall:

- (a) keep a file of the contracts awarded by the said board;
- (b) keep in a forge-proof and numbered register, minutes of meetings, excerpts of which shall be forwarded regularly to the public contracts regulatory body;
- (c) ensure the safe-keeping of records of contracts awarded by the tenders board;
- (d) draft and countersign the minutes of each session.

ARTICLE 21: (1) The operating expenditure of Internal and Special Tenders Boards shall be borne by the budget of Project Owners or Delegated Project Owners.

(2) The operating expenditure of regional and divisional tenders boards shall be borne by special budget heads of the regions and divisions concerned.

ARTICLE 22: (1) Tenders board chairpersons, members and secretaries, as well as representatives of Project Owners within regional and divisional tenders boards shall receive sitting allowances whose rates shall be fixed by a separate instrument of the Authority in charge of public contracts.



- (2) Bid evaluation sub-committee chairpersons, members and secretaries shall receive sitting allowances whose rates shall be fixed by a separate instrument of the Authority in charge of publiccontracts.
- (3) The Chairperson of the tenders board shall be the Delegated Authorizing Officer of the budget of Internal and Special Tenders Boards. For Internal Tenders Boards, he shall be accredited by the main Authorizing Officer of the relevant budget heads.
- (4) The Regional Governor shall be the Delegated Authorizing Officer of the budget of the Regional TendersBoard.
- (5) The Senior Divisional Officer shall be the Delegated Authorizing Officer of the Divisional TendersBoard.

SUB-SECTION IV

EXAMINATION OF FILES BY A TENDERS BOARD

ARTICLE 23: Files submitted to the tenders board shall include:

- (a) For the examination of the tender file or request forquotation:
 - an introductory note by the Project Owner or the Delegated ProjectOwner;
 - documents attesting to the availability of funds or budgetallocation;
 - the tender file or request for quotation proper, prepared based on the standard bidding document designed by the public contracts regulatory body, enforced by the Authority in charge of public contracts, and comprising notably the draft tender notice, the detailed quantity and cost estimate schedule, the unit price schedule,thespecialregulationsgoverningthetendernotice,evaluation criteria and sub-criteria, a sample of the draft contract, specifications, study reports and plans, where necessary.
- (b) For opening ofbids:
 - an introductory note signed by the Project Owner or the Delegated Project Owner;
 - the relevant Central Contracts Control Board's no-objection opinion on the tender file, wherenecessary;
 - the donor's no-objection opinion on the tender file, wherenecessary;
 - a copy of the tender notice and any subsequent addenda published in the Contracts Log Book or, where necessary, in other high-circulation national or internationalpublications;
 - excerpts of the bids register;



- the tender file made available to bidders;
 - all other relevant documents relating to the tenderfile.
- (c) For award proposal:
- the minutes of the bid opening session;
 - the bid evaluation report and, where necessary, a summary report signed by members of the Bid Evaluation Sub-committee;
 - the bid evaluation report signed by members of the Bid Evaluation Sub-committee or by members of the Jury for Competitive Tenders;
 - a separate memorandum of member(s) who did not sign the bid evaluation report;
 - the minutes of negotiations, where applicable, particularly for invitations to tender comprising 2 (two) phases.
- (d) For the examination of a draft contract awarded by mutual agreement:
- an introductory statement by the Project Owner or the Delegated Project Owner concerned;
 - the authorization of the Authority in charge of public contracts;
 - documents attesting to the availability of funds or budget allocation;
 - the contractor (s) tenderfile;
 - the bid of the allottee comprising, among other things, the detailed breakdown of prices;
 - the evaluation report, where necessary;
 - the approved draft contract;
 - preliminary studies justifying notably the quantities adopted.
- (e) For the examination of a draft contract amendment:
- an introductory statement by the Contracting Authority or Delegated Contracting Authority concerned;
 - the preliminary study justifying the draft contract amendment, if needed;
 - the initial contract and, where applicable, the contract amendment already concluded;
 - the draft contract amendment approved by the Administration's contracting partner;
 - documents attesting to the availability of additional funds or budget

allocation, wherenecessary.

CHAPTER II
PUBLIC CONTRACTS CONTROL BODIES
SECTION I
CENTRAL CONTRACTS CONTROL BOARDS
SUB-SECTION I
DUTIES

ARTICLE 24: (1) Central contracts control boards shall be technical bodies placed under the Minister in charge of public contracts. They shall be responsible for *ex ante* control of procedures for the award of public contracts under their remit initiated by Project Owners or Delegated Project Owners.

(2) The Authority in charge of public contracts may set up central contracts control boards under the authority of regional governors to take into account the amount of votes allocated to Delegated Project Owners and votes transferred to regional and local authorities or the volume of contracts initiated by Project Owners or Delegated Project Owners of the region concerned and falling under the remit of a central control board.

ARTICLE 25: Central contracts control boards shall be seised by Project Owners or Delegated Project Owners depending on the nature of services and shall give an opinion on:

- (a) the tender files prepared by Project Owners or Delegated Project Owners and examined by tendersboards;
- (b) the contract awardprocedure;
- (c) the contract award proposals of tenders boards validated by Project Owners or Delegated ProjectOwners;
- (d) draft contracts awarded by mutual agreement falling within their remit and any draft contractamendments.

ARTICLE 26: (1) The central contracts control boards under the Minister in charge of public contracts shall comprise:

- (a) the Central Contracts Control Board for Road Works;
- (b) the Central Contracts Control Board for OtherInfrastructure;
- (c) the Central Contracts Control Board for Building and Community Facility Works;



- (d) the Central Contracts Control Board for General Supplies;
 - (e) the Central Contracts Control Board for Service and Intellectual Service Contracts.
- (2) The instrument setting up a central contracts control board under a regional governor shall specify its area of competence and composition.

ARTICLE 27: (1) The following contracts shall fall within the remit of the Central Contracts Control Board for Road Works:

- (a) road construction, rehabilitation and maintenance works;
- (b) road and various service connection works;
- (c) the construction of engineering structures (bridges and culverts);
- (d) ancillary supplies and facilities directly or indirectly related to the said works;
- (e) studies on and supervision of the works listed in sub-paragraphs (a) and (b) above.

(2) Invitations to tender for which the cumulative amount of lots is equal to or more than 5 000 000 000 (five billion) CFA francs, as well as contracts awarded by mutual agreement within the same price bracket shall be referred to the Central Contracts Control Board for Road Works.

ARTICLE 28: (1) The following contracts shall fall within the remit of the Central Contracts Control Board for Other Infrastructure:

- (a) the construction of special engineering structures (airports, seaports, viaducts, railway infrastructure, dykes, dams, transport and storage facilities, etc.);
- (b) water supply, electrification and telecommunications projects;
- (c) ancillary supplies and facilities directly or indirectly related to the said works;
- (d) studies on and supervision of the works listed in sub-paragraphs (a) and (b) above.

(2) Invitations to tender for which the cumulative amount of lots is equal to or more than 1 000 000 000 (one billion) CFA francs, as well as contracts awarded by mutual agreement within the same price bracket shall be referred to the Central Contracts Control Board for Other Infrastructure.

ARTICLE 29: (1) The following contracts shall fall within the remit of the Central Contracts Control Board for Building and Community Facility Works:



- (a) building construction or rehabilitation works;
 - (b) development of public squares, green spaces, and sports and leisure grounds;
 - (c) maintenancesworks;
 - (d) ancillary supplies and facilities directly or indirectly related to the saidworks;
 - (e) studies on and supervision of the works listed in sub-paragraphs (a) and (b) above.
- (2) Invitations to tender for which the cumulative amount of lots is equal to or more than 500 000 000 (five hundred million) CFA francs, as well as contracts awarded by mutual agreement within the same price bracket shall be referred to the Central Contracts Control Board for Building and Community FacilityWorks.

ARTICLE 30: (1) The following contracts shall fall within the remit of the Central Contracts Control Board for General Supplies:

- (a) provision of officesupplies;
 - (b) supply of textbooks, educational, pedagogic and didacticmaterials;
 - (c) supply of expendables and medical and biomedicalequipment;
 - (d) agricultural inputs and rawmaterials;
 - (e) supply of electronic and electricalequipment;
 - (f) supply and maintenance of rollingstock;
 - (g) other supplies that do not fall within the remit of another tendersboard.
- (2) Invitations to tender for which the cumulative amount of lots is equal to or more than 250 000 000 (two hundred and fifty million) CFA francs, as well as contracts awarded by mutual agreement within the same price bracket shall be referred to the Central Contracts Control Board for General Supplies.

ARTICLE 31: (1) The following contracts shall fall within the remit of the Central Contracts Control Board for Service and Intellectual Service Contracts:

- (a) studies, audits, consultations, surveys andpolls;
- (b) consultancies, institutional reforms, management, engineering services, control, training, financial services, andinsurance;
- (c) studies and supervision of works other than those that fall within the remit of other tenders boards;
- (d) selection of computer hardware and design of software and software



packages;

(e) any other intellectual services.

(2) Invitations to tender for which the cumulative amount of lots is equal to or more than 100 000 000 (one hundred million) CFA francs, as well as contracts awarded by mutual agreement within the same price bracket shall be referred to the Central Contracts Control Board for Service and Intellectual ServiceContracts.

ARTICLE 32: Where services falling under the same invitation to tender are divided into lots, all the contracts to be awarded must be considered in order to determine the competence of the Central Contracts Control Board.

SUB-SECTION II COMPOSITION OF CENTRAL CONTRACTS CONTROL BOARDS

ARTICLE 33: (1) Each central contracts control board shall comprise:

- a chairperson appointed by the Authority in charge of publiccontracts;
 - a representative of the Presidency of theRepublic;
 - a representative of the Prime Minister'sOffice;
 - a representative of the Ministry in charge of publiccontracts;
 - a representative of the Ministry in charge offinance;
 - a representative of the Ministry in charge publicinvestments;
 - a civil society representative operating in the area of competence of the Board, designated by the Minister in charge of publiccontracts;
 - a secretary appointed by the Minister in charge of publiccontracts.
- (2) A representative of the Project Owner or the Delegated Project Owner shall take part in the deliberations of the central contracts control board in an advisory capacity.
- (3) The Chairperson and members of central contracts control boards shall be appointed for a two-year term of office, renewable once. However, their duties may be terminated in case of seriousbreach.
- (4) The Chairperson and members of central contract control boards shall be

chosen from among personalities of good moral standing with a mastery of the regulations and procedures relating to the award of public contracts.

SUB-SECTION III

FUNCTIONING OF CONTRACTS CONTROL BOARDS

ARTICLE 34: (1) The central contracts control board may validly deliberate only in the presence of its chairperson and at least 4 (four) members including the representative of the minister in charge of public contracts and the secretary.

(2) The resolutions of 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 to be examined, the Chairperson of the central contracts control board shall select an expert, on account of his expertise in the area concerned by the project, from a list drawn up and regularly updated by the public contracts regulatory body.

(2) The expert shall examine the technical aspects of the documents received from the Project Owner or the Delegated Project Owner and prepare and submit a report to the Contracts Control Board within 5 (five) working days. He shall answer questions from members of the central contracts control board, but may under no circumstances take part in deliberations.

ARTICLE 36: (1) The Chairperson of the central contracts control board shall ensure its proper functioning.

As such, he shall:

- propose an agenda to be adopted in session;
 - fix meeting days and times;
 - sign the minutes of each session;
 - notify the opinions of the central contracts control board to the Project Owner or the Delegated Project Owner;
 - forward, within seventy-two (72) hours, after the end of the deliberations of the central contracts control board, all documents pertaining to the files examined by the board, for use, preservation and filing;
- (1) He may invite any person by virtue of his expertise on the agenda items to take part in the deliberations of the said board.
- (2) He shall be the Authorizing Officer of the budget of the central contracts control board.



(3) The operating expenditure of the central contracts control board shall be charged to a specific head of 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 file of the contracts awarded by the board;
- (b) keep in a forge-proof and numbered register, minutes of meetings, excerpts of which shall be forwarded regularly to the regulatory body;
- (c) ensure the safe-keeping of records of contracts processed by the tenders board;
- (d) draft and countersign the minutes of each session.

ARTICLE 38: The chairpersons, members, secretaries and experts of central contracts control boards shall receive an allowance whose amount shall be fixed by a separate 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 central contracts control boards shall comprise the following:

- (a) for the examination of tender documents:
 - an introductory note by the Project Owner or the Delegated Project Owner concerned attesting to the availability of preliminary studies;
 - documents attesting to the availability of funds or budget allocation;
 - minutes of the central contracts control board meeting during which the tender documents were examined;
 - the independent observer's report on the central contracts control board session during which the tender documents were examined, where necessary;
 - the draft tender documents adopted by the tenders board.
- (b) for contract award:
 - tender documents placed at the disposal of bidders;
 - minutes of the bid opening session;
 - evaluation report and, eventually, the summary report signed by members of the Bid Evaluation Sub-committee;
 - minutes of the bid evaluation report review session;
 - minutes of negotiations, where necessary, particularly for invitations to



- tender in 2 (two) phases;
- the draft contract award decision;
- the independent observer's report.

(c) for draft contracts awarded by mutual agreement:

- an introductory note by the Project Owner or the Delegated Project Owner concerned;
- the authorization of the Authority in charge of public contracts;
- documents attesting to the availability of funds or budget allocation;
- the contractor (s) tenderfile;
- the allottee's bid including the detailed prices;
- the evaluation report, where necessary;
- the approved draftcontract;
- the independent observer's report, where necessary.

(d) for the draft contractamendment:

- an introductory note by the Project Owner or the Delegated Project Owner concerned justifying the contract amendment;
- the technical note by the project manager or engineer;
- the initial contract and, where appropriate, the amendments already agreed;
- the draft contract amendment signed by the Administration's contracting partner;
- minutes of the board's contract amendment review session, where necessary;
- the independent observer's report, where necessary.

SUB-SECTION V

OPINIONS OF CENTRAL CONTRACTS CONTROL BOARDS

ARTICLE 40: (1) The central contracts control board shall express one of the following opinions on each file within its competence:

- (a) no objection: in this case, the Project Owner or the Delegated Project Owner shall continue the procedure initiated;
- (b) no objection with reservations: in this case, the Project Owner or the Delegated Project Owner shall be bound to correct the points that led to the reservations before continuing the procedure;
- (c) objection: in this case, the Project Owner or the Delegated Project Owner may not continue the procedure initiated.



- (2) The central contracts control board shall give its opinion within 10 (ten) working days of being seised by the Project Owner or the Delegated Project Owner, including the deadline for the Expert to submit his report.
- (3) After the deadline set in (2) above, the opinion shall be considered favourable.
- (4) The opinions of central contracts control boards must be reasoned.
- (5) They may be sent to any interested bidder who so requests.

ARTICLE 41: (1) The Chairperson of the central contracts control board shall notify the Board's reasoned opinion to the Project Owner or the Delegated Project Owner, the Public Procurement Authority and the public contracts regulatory body as follows:

- within 48 (forty-eight) hours with effect from the closing date of deliberations, where the Board expresses no objection to the award;
 - within 72 (seventy-two) hours with effect from the closing date of deliberations, where the board expresses any other opinion.
- (2) In case of no objection, the Project Owner or the Delegated Project Owner shall publish the invitation to tender or award the contract and notify his decision to the Chairperson of the board within 5 (five) working days with effect from the date of receipt of the notification of opinion referred to in (1) above.

SECTION II INDEPENDENT OBSERVER

ARTICLE 42: (1) The independent observer shall be a natural or corporate body recruited through competitive bidding by the public contracts regulatory body to ensure compliance with regulations, transparency rules and principles of equity in the public contracts award process.

- (2) He shall attend sessions of tenders boards as well as the deliberations of bids evaluation sub-committees for contract amounts of not less than 50 000 000 (fifty million) CFAF in order to:
- (a) assess the process by reporting, at each stage, non-compliance with the regulations, transparency rules and principles of equity;
 - (b) indicate practices contrary to good governance in the procedure for the award of public contracts especially influence peddling, conflict of interest and insider dealing.
- (3) The independent observer shall receive a copy of all documentation relating to

the files submitted to the tenders board under whose authority he is placed.

- (4) He shall forward to the public contracts regulatory body, the Project Owner and the Chairperson of the tenders board concerned within 72 (seventy-two) hours of the end of the board's session, a detailed report on the said session and that of the Bid Evaluation Sub-committee, where necessary.
- (5) The Chairperson of the tenders board and the Project Owner or the Delegated Project Owner may, where necessary, notify the organ in charge of regulating public contracts of their observations within 72 (seventy-two) hours of receipt of the independent observer's report.
- (6) On the basis of the reports of the independent observer or the regulatory body, the Authority in charge of public contracts may cancel a contract awarded in violation of regulations or in disregard of the rules of transparency and the principle of equity.

SECTION III

PUBLIC CONTRACTS EXECUTION MONITORING ORGANS

ARTICLE 43: The execution of public contracts shall be monitored by the Project Owner or the Delegated Project Owner through the Contract Manager, the Contract Engineer, and the Project Manager, where necessary.

To this end, the Project Owner shall;

- (a) designate the Contract Manager and the Contract Engineer, and provide them with the appropriate means for a proper discharge of their duties;
- (b) sign administrative orders to commence service delivery;
- (c) sign administrative orders having an incidence on costs, time limits and objectives under the conditions specified in the general administrative clauses;
- (d) designate a representative to chair the Service Acceptance Committee;
- (e) order payment on account;
- (f) terminate contracts after formal notice, where necessary;
- (g) ensure the drafting of the contract execution completion report.

ARTICLE 44: (1) The Contract Manager shall be a public law natural person accredited by the Project Owner or the Delegated Project Owner for general administrative, financial and technical assistance during the definition, preparation, delivery and acceptance of the services which are the subject of the contract.

- (2) He shall be responsible for the overall management of service delivery. He shall approve all the technical and financial provisions and represent the Project Owner or the Delegated Project Owner in the relevant dispute settlement



bodies.

In that capacity, he shall particularly be responsible for:

- (a) ensuring the proper fulfilment of legal, administrative, social and contractual obligations;
 - (b) drafting contract execution progress and completion reports;
 - (c) calculating payments on account and monitoring their settlement. To that end, he shall receive the related supporting documents from the payment bodies;
 - (d) convening the acceptance committee or the technical approval committee;
 - (e) monitoring the Project Manager, where necessary, and approving his periodic reports;
 - (f) forwarding contract execution reports and documents to the Project Owner, the Ministry of Public Contracts and to the public contracts regulatory body;
 - (g) arbitrating conflicts between the Contracting Party and the Engineer or, where applicable, between the Contracting Party and the Project Manager;
 - (h) chairing periodic contract management meetings.
- (3) He shall report to the Project Owner or the Delegated Project Owner.
- (4) Regional and divisional delegates of government services shall perform the duties of Contract Manager of contracts for which they are Delegated Project Owners.
- (5) However, regional and divisional delegates of government services may delegate one of their staff to perform the duties, in view of their workload, and to enable the effective monitoring of contract execution.

ARTICLE 45: (1) The Contract Engineer shall be a public law natural person or corporate body accredited by the Project Owner or the Delegated Project Owner for the technical and financial monitoring and supervision of contract execution.

As such, he shall:

- (a) approve the construction documents and the various changes proposed by the Contracting Party, or by the Project Manager, where necessary;
- (b) ensure that the project is functional and in compliance with the objectives set by the Project Owner or the Delegated Project Owner;
- (c) ensure contract quality control, in the case of public contract or ship;
- (d) check and countersign daily statements with the Contracting Party;
- (e) initial payments on account for services provided;
- (f) supervise pre-acceptance operations;



- (g) coordinate various project stakeholders, if needbe;
 - (h) ensure the provision of various guarantees during the execution phase and throughout the project cycle.
- (2) He shall report to the Contract Manager.

ARTICLE 46: (1) The Project Manager shall be a public or private law natural or corporate body appointed by the Project Owner or the Delegated Project Owner to defend the latter's interests during the definition, preparation, execution and acceptance of the services which are the subject of the contract.

- (2) He shall be responsible for the management and permanent control of service delivery.

In that capacity, he shall:

- (a) assist the Project Owner in the award of works or service contracts, where necessary;
 - (b) ensure compliance with works or supplies contract clauses by the contract holder;
 - (c) ensure quality control of services provided and pre-accepts or not parts of the works executed;
 - (d) check the quantities to be included in the daily statement and approve payments on account;
 - (e) chair meetings in the absence of the Contract Manager and the Contract Engineer;
 - (f) draft or ensure the drafting of periodic control reports;
 - (g) forward a copy of the final report on his services to the Project Owner, the Ministry in charge of public contracts and the public contracts regulatory body.
- (3) He shall perform his duties under the supervision of the Contract Engineer.

SECTION IV PUBLIC CONTRACT EXECUTION EXTERNAL CONTROL BODY

ARTICLE 47: (1) The Ministry in charge of public contracts shall carry out public contract execution external control.

In that capacity, it shall:

- (a) through spot checks, verify the effectiveness and quality of the services provided and accepted;



- (b) after the signing of the contract, verify its compliance with the tender file, the award decision and the bid of the selected contracting party;
 - (c) based on all the detailed payments on account copies of which he has received, conduct ex post verification of consistency between the services billed, the payments made and the services performed;
 - (d) report to the Contract Manager, the Contract Engineer and/or the Project Manager any cases of irregularity observed in the execution of contracts;
 - (e) take part in the technical acceptance of services as an observer;
 - (f) receive a copy of provisional payments on account and initial the final payment on account for work contracts or the last invoice for the other types of services;
 - (g) contribute to replenishing the public contracts databank;
 - (h) report, where necessary, to the public contracts regulatory body, the shortcomings of public contract actors requiring capacity building;
 - (i) draft half-yearly and annual reports on the general situation of the execution of contracts.
- (2) The Ministry in charge of public contracts shall receive from the actors concerned a copy of all the documents necessary for the accomplishment of its mission, particularly:
- the tender file provided to bidders;
 - the bid of the Administration's contracting partner;
 - the award decision;
 - the signed and notified contracts and contract amendments;
 - the service delivery schedule;
 - administrative orders, including those prescribing the commencement of services;
 - provisional and final payments on account;
 - invitations to technical acceptance and validation committees;
 - technical acceptance and approval reports;
 - project technical and financial execution completion reports;
 - public and private control mission reports.

CHAPTER III PUBLIC CONTRACTS REGULATORY BODY

ARTICLE 48: (1) Public contracts shall be regulated by a body set up for that purpose.

(2) The public contracts regulatory body shall supervise and facilitate the public procurement system.



In that capacity, it shall:

- (a) express opinions to the Authority in charge of public contracts for the formulation and improvement of related policies;
 - (b) ensure the application of principles of good governance, particularly by implementing preventive measures to combat public procurement malpractices;
 - (c) ensure the proper application of rules by all actors through opinions and recommendations;
 - (d) propose public contracts sector reforms to the Authority in charge of public contracts;
 - (e) design public contracts sector training policies and strategies, and develop a related professional and institutional framework;
 - (f) coordinate, feed and monitor the public contracts information system;
 - (g) periodically assess the compliance and performance of the national public contracts award system with respect to relevant international indicators and standards;
 - (h) approve public contracts sector experts;
 - (i) examine disputes arising from public contract procedures and express technical opinions to the Committee in charge of reviewing complaints submitted by bidders;
 - (j) edit and publish the Public Contracts logbook;
 - (k) propose procedure-related penalties to the Authority in charge of public contracts;
 - (l) conduct specific audits.
- (3) The public contracts regulatory body shall regularly prepare and submit to the Authority in charge of public contracts a record of regulatory instruments, with copies to the Minister in charge of territorial administration for contracts awarded by regional and local authorities, governors for contracts awarded by Delegated Project Owners, and the technical supervisory minister for contracts awarded by public establishments.
- (4) A separate instrument shall lay down the duties and conditions for the functioning of the public contracts regulatory body.

CHAPTER IV COMPLAINTS REVIEW BODY

ARTICLE 49: (1) A committee in charge of reviewing complaints submitted by bidders who feel aggrieved and proposing appropriate measures to the Authority in charge of public contracts is established under the public contracts regulatory body.



- (2) The organization, composition and functioning of the Complaints Review Committee shall be laid down by a separate instrument of the Authority in charge of public contracts.
- (3) Branches of the Complaints Review Committee may be set up in regions.

CHAPTER V 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 organize and ensure the smooth functioning of the public contracts system.

In that capacity, he shall:

- sign the implementing instruments of the Public Contracts Code;
 - impose sanctions on perpetrators of malpractices and settle disputes stemming from public contracts, as well as disagreements between public employees;
 - have the powers to authorize special procedures.
- (2) The Authority in charge of public contracts may, of his own volition, impose procedure-related penalties, where necessary.

PART III AWARD OF PUBLIC CONTRACTS

CHAPTER I GENERAL PROVISIONS

SECTION I BIDDERS

ARTICLE 51: (1) Bidders shall be natural persons or corporate bodies participating in the public procurement procedure.

- (2) Natural persons or corporate bodies that:
- (a) are winding up or are bankrupt;
 - (b) are subject to one of the exclusion orders or forfeitures provided for by the laws and regulations in force at the national and international levels;

- (c) have not made declarations provided for by the laws and regulations in force;

shall not be admitted to tender for public contracts, subject to the provisions of Article 52 of this Public Contracts Code.

ARTICLE 52: (1) Public law legal persons shall be admitted to participate in the public procurement procedure if they can show proof of:

- (a) having legal personality and financial autonomy;
 - (b) being managed according to private accounting rules;and
 - (c) not being under the supervisory authority of the Project Owner or the Delegated Project Owner concerned, except otherwise authorized by the Authority in charge of public contracts.
- (2) Civil society organizations and public establishments interested in public procurement shall be subject to the provisions of this Public Contracts Code. However, they may bid only if the prices offered are competitive, that is, if they have been determined taking into account all the direct and indirect costs contributing to the formation of the price of the service that is the subject of the contract.
- (3) In such cases, public establishments must show proof that, in fixing this price, they did not enjoy any benefits from the resources allocated to them in respect of their public servicemissions.
- (4) Special regulations governing invitations to tender or consultation shall, in accordance with the regulations in force, determine the conditions for the participation of the actors referred to in this article in a given consultation, whether through invitation to tender or by mutual agreement.

SECTION II CATEGORIZATION OF ENTERPRISES

ARTICLE 53: (1) The Project Owner or the Delegated Project Owner may reserve some works contracts for a certain category of public works and civil engineering enterprises.

- (2) The conditions for categorizing public works and civil engineering enterprises shall be laid down by a separate instrument of the Authority in charge of public contracts.



CHAPTER II PREREQUISITES FOR THE AWARD OF PUBLIC CONTRACTS

SECTION I NEEDS IDENTIFICATION

ARTICLE 54: (1) Before launching any invitation to tender or consultation, the Project Owner shall be bound to conduct a study to determine as exactly as possible the type and scope of needs to be met.

(2) The Project Owner who does not have the appropriate competence to conduct the study provided for in (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 in Article 54 above should define the specifications and nature of the services that are the subject of the contract and result in a design study describing all the characteristics of the works to be executed or supplies to be made, or the terms of reference of the services concerned.

(2) Preliminary studies shall be compulsory and must take into account, in particular:

- (a) destruction of property, bare ownership, displacement of networks (water, electricity, telephone, etc.), release of the selected site, payment of compensation to persons evicted and access conditions in case of works contracts;
- (b) the disability approach to infrastructure projects;
- (c) promotion of employment through the development of local resources such as manpower, local equipment and materials, particularly through the labour-intensive approach (HIMO), in accordance with the regulations in force;
- (d) compliance with safety standards, particularly those relating to buildings open to the public;
- (e) compliance with environmental standards;

- (f) sizing or allotting the project so as to highlight the services to be provided by local small- and medium-sized enterprises and community-based organizations on the one hand, and those likely to be subcontracted to local enterprises on the otherhand.
- (3) Preliminary studies for work contracts for the maintenance and/or rehabilitation of roads or civil engineering structures and repair of buildings or equipment shall include a degradation survey and indicate the level of servicesought.
- (4) Studies for new works and procurement of new equipment should be conducted up to the final design level for roads and procurement, and to the detailed engineering level for buildings and other infrastructure.
- (5) Terms of reference for intellectual services should include the context, the scope of planned services, the objectives and expected outcomes, the specific competences and qualification of experts to be mobilized, and the schedule and estimated cost ofservices.
- (6) Studies for supply contracts should specify the detailed functional or performance characteristics of the goods or equipment to be procured, the applicable standards and delivery constraints for the preparation of delivery schedules.

SUB-SECTION II APPLICABLE STANDARDS

ARTICLE 56: (1) Works, supplies and services under a public contract shall be defined with reference to standards, technical approvals or features which must be clearly stated in the specifications.

- (2) Any reference to brand names or to proprietary specifications from a specific supplier or service provider shall be forbidden.
- (3) However, any such indication with the words "or equivalent" shall be authorized where the Project Owners are unable to describe the subject of the contract using specifications that are sufficiently precise and clear for all interested parties.

SUB-SECTION III SOCIAL AND ENVIRONMENTAL CLAUSES

ARTICLE 57: (1) The conditions for executing public contracts should include social, economic and environmental considerations that promote local manpower, decent work and, where applicable, achieve sustainable development goals.

These shall include:



- (a) incorporating environmental protection standards into the award and execution process;
 - (b) introducing in the contract clauses that ensure compliance with the labour standards ratified by Cameroon;
 - (c) establishing an appropriate inspection system during the execution of the contract to ensure compliance with working conditions;
 - (d) protecting monuments, cultural sites and social values.
- (2) The conditions for executing contracts indicated in bidding documents should, where possible, prioritize the use of the labour-intensive approach (HIMO), in accordance with the regulations in force and the contract execution methods to be specified in the Special Technical Specifications.

SUB-SECTION IV VALLOTMENT

ARTICLE 58: (1) Where the division of services into lots is likely to have technical, financial or organizational advantages, the works, supplies or services shall be divided into lots of the same kind or according to their location.

- (2) Bidding regulations shall determine the number, nature and size of the lots, as well as the conditions applicable to bidders, the required technical and financial capacity, and the terms and conditions for their award.
- (3) On no account shall the purpose of allotment, in relation to the total cost of the project, be to elude control bodies.
- (4) In case of allotment, each lot should give rise to a separate contract.

SECTION III PROGRAMMING OF PUBLIC CONTRACTS

Article 59: (1) The award and execution of public contracts must be programmed by the Project Owner or the Delegated Project Owner, in conjunction with the Ministry in charge of public contracts.

- (2) For government services, the draft programming logbook containing externally funded contracts prepared based on a model designed by the body in charge of regulating public contracts, as well as the simplified contracts award schedule, should be presented at the budget preparation conference.
- (3) For other government services, the adoption of budgets by the competent bodies shall be subject to the presentation of a draft programming logbook including externally funded contracts.



- (4) Within 10 (ten) working days from the date of adoption of the budget, each Project Owner shall be bound to forward a copy of the final programming logbook to the Ministry in charge of public contracts, the public contracts regulatory body and the competent tenders boards.
- (5) Programming logbooks shall be updated periodically by Project Owners and Delegated Project Owners, in conjunction with the Ministry in charge of public contracts.

SECTION IV AVAILABILITY OF SITE AND FUNDING

Article 60: (1) The Project Owner or the Delegated Project Owner shall be bound to take all necessary measures to make available the work site before notifying the contract concerned. He must show proof, where appropriate, of the effective existence of the declaration of public utility, the expropriation decree, the transfer instrument or any other legal or administrative instrument showing proof of the availability of the site.

- (2) The Project Owner or the Delegated Project Owner shall be bound to ensure the availability of funding before launching bidding. This shall entail attesting, as the case may be, to the budget allocation, the effective expenditure authorization, and the entry into force of the funding agreement.
- (3) For recurrent services or projects whose effective commencement date is incompatible with prior adoption of the budget of the corresponding financial year, related consultations may be launched before the adoption of the said budget.
- (4) In the cases referred to in (3) above, the notification of the contract shall be subject to the existence of evidence of funding and site availability, where applicable.

CHAPTER III TYPES OF PUBLIC CONTRACTS

SECTION I WORKS CONTRACTS

Article 61: Works contracts shall be contracts intended for construction, reconstruction, demolition, repair and renovation of any building, road or structure, including the preparation of work sites, earthworks, installation of equipment or material, decoration and finishing, as well as ancillary works services, where the value of such services does not exceed that of the works proper.



SECTION II SUPPLIES CONTRACTS

Article 62: The purpose of supplies contracts shall be the purchase, leasing and hire- purchase of products or equipment including services and accessories, where their value does not exceed that of the goods themselves.

SECTION III QUANTIFIABLE SERVICE CONTRACTS

Article 63: (1) Service contracts shall be contracts whose services do not necessarily require design. They shall produce a tangible measurable result.

- (2) Such services shall include guarding, cleaning or maintenance of public buildings or parks, repair or maintenance of office equipment or computer hardware and insurance, excluding health insurance.

SECTION IV NON-QUANTIFIABLE SERVICE AND INTELLECTUAL SERVICES CONTRACTS

- (1) Non-quantifiable service contracts shall be contracts whose services are mainly intellectual.
- (2) They shall concern, inter alia, health insurance, advertising, organization of training seminars and intellectual services, including project supervision, audits, studies, control, and specific intellectual property-related obligations.

SECTION V OTHER TYPES OF CONTRACTS

SUB-SECTION I DESIGN AND EXECUTION CONTRACTS

Article 64: A design and execution contract shall be a works contract which enables the Project Owner to assign to a group of economic operators or, for infrastructure contracts only, to a single economic operator, a task involving the conduct of studies and the execution of works.

SUB-SECTION II FRAMEWORK AGREEMENTS

ARTICLE 65: (1) Where the Project Owner cannot determine in advance the volume and the rate of supply orders or routine services required for his needs, he may resort to a framework agreement.

- (1) Framework agreements shall be contracts concluded by one or more Project Owners with one or more service providers in order to lay down rules relating to the purchase orders to be issued, or the provisions governing subsequent framework agreements to be concluded over a given period, particularly regarding prices and, where necessary, the quantities envisaged.
- (2) Framework agreements may not exceed 3 (three) years.
- (3) Where the framework agreement is signed for a period of more than 12 (twelve) months, and where the framework agreement clearly so provides, each of the contracting parties shall have the latitude to request, on the dates fixed by them, the revision of prices by applying the price revision formula contained therein, or terminate the contract where the application of the price revision formula may lead to a unit price variation of more than 25%.
- (4) The use of framework agreements shall apply only to supplies or recurrent services as well as maintenance and renovation works.

Article 66: (1) Where the framework agreement sets the minimum and maximum value or quantity of supplies or services likely to be ordered over a prescribed period not exceeding the period for the payment of appropriations, given that the quantities of the services or supplies to be executed are specified, such framework shall be executed as the purchase orders are issued.

- (2) Orders shall be written documents sent to the framework agreement holder. They shall specify the service orders described in the framework agreement whose execution is requested and fix the quantity thereof.

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

- (2) Subsequent blanket purchase contracts shall specify the characteristics, terms and conditions of execution of the services requested which did not feature in the framework agreement. They may not lead to substantial changes in the provisions of the framework agreement.



SUB-SECTION III MULTI-YEAR AND TRANCHE CONTRACTS

ARTICLE 68: (1) Where the full funding required for the execution of a project cannot be raised in one financial year and the services may be spread over several years or executed in several phases comprising a firm tranche and one or more conditional tranches, the Project Owner must schedule the expenditure related to each financial year.

(2) The contracts referred to in (1) above must feature in a single invitation to tender and indicate the period for which they are concluded.

Article 69: (1) Multi-year contracts comprising one firm annual tranche and conditional annual tranches shall define the nature, price and conditions for providing the services in each tranche.

(2) The services in each tranche must form a coherent whole which takes into account the services of the previous tranches, where they exist.

(3) Contracts comprising one firm tranche and one or more conditional tranches may contain a termination clause with notice in favour of either party.

(4) The execution of each conditional tranche shall be subject to a service order by the Project Owner or the Delegated Project Owner to the contracting party under the contract conditions.

SUB-SECTION IV RESERVED CONTRACTS

ARTICLE 70: (1) Some contracts may be reserved for craftsmen, national small- and medium-sized enterprises, and community-based and civil society organizations.

(2) The nature and threshold of the contracts referred to in (1) above, as well as the conditions for their application shall be laid down by a separate instrument of the Authority in charge of contracts.

SUB-SECTION V SPECIAL CONTRACTS

ARTICLE 71: (1) Special contracts shall be public contracts which are not fully or partly governed by the provisions relating to contracts through invitation to tender or contracts awarded by mutual agreement. They shall mostly concern contracts relating to national defence, security and the strategic interests of the State.

- (2) The contracts referred to in (1) above shall contain secret clauses for reasons of State security and strategic interests, and shall therefore not be reviewed by any tenders board provided for in this Public Contracts Code.
- (3) Special contracts shall concern the procurement of equipment, supplies or services directly related to national defence and security, and contracts for which the strategic interests of the State are at stake.
- (4) Special contracts shall be awarded after prior authorization by the President of the Republic.

CHAPTER IV PUBLIC CONTRACT AWARD PROCEDURES

SECTION I CONTRACTS AWARDED THROUGH INVITATION TO TENDER

SUB-SECTION I GENERAL PROVISIONS

ARTICLE 72: (1) Public contracts shall be awarded through invitation to tender after competitive bidding by the Administration's potential contracting partners.

- (2) They may be exceptionally awarded through the mutual agreement procedure under the conditions laid down in this Public Contracts Code.
- (3) Public contracts shall be subject to the tax and customs regime applicable in Cameroon, except otherwise expressly provided by the laws or regulations, and subject to the provisions of external assistance financing agreements or international conventions and agreements.

ARTICLE 73: (1) Invitation to tender shall be the procedure whereby a contract is awarded after public competitive bidding.

- (2) The selection criteria shall take into account in particular:
 - (a) the qualification and professional capacity of bidders;
 - (b) the price of services and any variants proposed or the cost of using them;
 - (c) the completion or delivery deadlines;
 - (d) the technical and functional value of services, particularly the conditions for use and maintenance, as well as the potential lifespan of the works or the supplies and services concerned.



SUB-SECTION II TYPES OF INVITATION TO TENDER

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

- (a) national, where it concerns natural persons or corporate bodies domiciled or headquartered in Cameroon; or
 - (b) international, where it concerns natural or corporate bodies domiciled or headquartered within or outside the national territory.
- (2) Each type of invitation to tender referred to in (1) above may be open, restricted, with design competition or two-stage tendering.

Paragraph 1 Open Invitation to Tender

ARTICLE 75: (1) An open invitation to tender shall be one whereby a public notice invites all interested persons to submit their bids by a given date.

- (2) After publication of the notice, the tender document shall be put at the disposal of each bidder who so requests.

Paragraph 2 Restricted Invitation to Tender

ARTICLE 76: (1) A restricted invitation to tender shall be one that is preceded by prequalification.

- (2) Prequalification shall be conducted for services of the same nature following a public call for bids through publication in authorized newspapers of a notice relating to a special tender or a set of tenders over a period of no more than 6 (six) months.
- (3) The public call for bids must specify the qualification criteria, particularly the administrative conditions to ascertain the legal existence of bidders and their references in the field concerned.
- (4) The restricted invitation to tender shall concern at least 3 (three) bidders selected following a prequalification 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 bidders prequalified per lot shall be 3 (three). Otherwise, the Project Owner or the Delegated Project Owner must resort to an open invitation to tender for the lot(s) concerned.

- (6) Where prequalification concerns a set of invitations to tender spread over the period referred to in (2) above, the open call for bids must limit the number or total volume of contracts that may be awarded to a bidder based on their capacity.
- (7) After the prequalification process conducted by the Project Owner or the Delegated Project Owner, a shortlist of pre-selected bidders shall be published before launching of the invitation to tender.
- (8) Letters of invitation to tender shall be sent to the short-listed bidders and the approved tender documents placed at their disposal under the same conditions as those provided for in Article 75 of this Public Contracts Code.

ARTICLE 77: (1) The deadlines for submitting bids with effect from the date of publication of the request for expression of interest shall be:

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

(2) In case of emergency, the deadlines referred to in (1) above may be reduced to 10 (ten) and 15 (fifteen) working days respectively.

ARTICLE 78: (1) The use of restricted invitations to tender shall be mandatory for intellectual service contracts.

(2) Restricted invitations to tender may also be used for the following:

- (a) specific major or complex works or equipment;
- (b) supply of material to be manufactured on order and specialized services.

(3) The Project Owner or the Delegated Project Owner may be granted a waiver on the prequalification process:

- for intellectual services under jobbing orders;
- where prequalification is unsuccessful or ends up with less than 3 (three) bidders per lot;
- where the contract award schedule prepared in accordance with the regulations in force shows that the time necessary to complete the procedure is such that projected start or completion dates may not be met;
- where the invitation to tender concerns service providers selected by category.



Paragraph 3

Invitation to Tender with Design Competition

ARTICLE 79: An invitation to tender may be accompanied by a design competition where technical, aesthetic or financial reasons warrant special studies.

ARTICLE 80: (1) Invitations to tender with design competition shall concern:

- (a) project design;
 - (b) project design and conduct of related study;
 - (c) project design and conduct of related study as well as implementation monitoring and control;
 - (d) project design and implementation, in case of a design and implementation contract as provided for in Article 64 above.
- (2) Services that may be open to design competition shall mainly concern architectural projects, artistic works, regional development, town planning and works under a design and implementation contract.
- (3) Design competition shall be organized following a schedule drawn up by the Project Owner specifying the required service to be rendered and, where necessary, fixing the maximum cost of project implementation.
- (4) Projects shall be reviewed by a panel of members with all the necessary artistic and technical skills to assess, under the best possible conditions, the projects concerned by the design competition.
- (5) The composition of the panel referred to in (4) above shall be laid down by the tender regulations.
- (6) Invitations to tender with design competition shall follow the procedure for open invitation to tender.

ARTICLE 81: (1) Where an invitation to tender with design competition concerns the design of a project, bonuses, awards or benefits shall be granted to the best ranked and most satisfactory projects.

- (2) In addition, the special regulations governing invitations to tender with design competition shall provide:
- (a) that the award-winning projects shall become wholly or partially the property of the Project Owner;
 - (b) or that the Project Owner shall reserve the right to cause all or part of the award-winning projects to be executed, subject to payment of a compensatory allowance fixed in the special regulations governing invitations to tender.



- (3) The design competition evaluation criteria must give preference to the project quality rather than the designer's references and take into account the estimated project cost.
- (4) The special regulations governing invitations to tender with design competition shall specify the conditions under which the designers of artistic works shall, where necessary, be requested to cooperate in the implementation of their award winning project.

ARTICLE 82: (1) Where the invitation to tender with competition concerns the design of a project, conduct of related study and monitoring and control of its implementation, or a project design and implementation, the evaluation criteria must take into account the project quality and projected estimated cost as well as the references of the bidders and the cost of the subsequent study, as the case maybe.

Paragraph 4 Two-stage Tendering

ARTICLE 83: (1) The Project Owner may resort to two-stage tendering where he wishes to make a selection based on such criteria as performance, operating constraints and economic costs instead of mere detailed technical specifications, and where he is able to prove that he is unable to:

- determine the resources required to meet his needs;
- assess available technical or financial solutions.

- (2) The use of the two-stage tendering procedure shall be subject to prior authorization by the Minister in charge of public contracts during programming.

ARTICLE 84: The procedure for the award of a contract under two-stage tendering shall be as follows:

(a) Stage 1

- The Project Owner or the Delegated Project Owner, through a public invitation to tender, requests bidders to submit bids relating to project technical, qualitative or other requirements based on the general principles of design or performance standards specified in the tender document and subject to any subsequent technical and/or commercial amendment.
- In any case, bidders must also show proof of their qualifications by providing the information requested.
- During this first stage, the Project Owner or the Delegated Project Owner may discuss the bidder's programme with the latter.



- Bidders may not make any price offer at this first stage.
- The Project Owner or the Delegated Project Owner forwards a report on the discussion to the relevant tenders boards, in accordance with the provisions of this Public Contracts Code relating to negotiations.

(b) Stage 2

- Bidders are requested to submit their final costed technical bids, on the basis of the tender document prepared or reviewed by the Project Owner or the Delegated Project Owner, depending on information obtained at the first stage.
- Any bidder who is not willing to submit a final bid may withdraw from the procedure. In such a case, the Project Owner or the Delegated Project Owner is bound to release his bidbond.
- The Project Owner or the Delegated Project Owner may make provision for a flat- rate payment for bidders who submit the most satisfactory bids under the conditions laid down in the tender document.

SUB-SECTION III CONTENT OF THE TENDER FILE

Paragraph 1 Tender Documents

ARTICLE 85: (1) The tender documents prepared following the model designed by the public contracts regulatory body and enforced by the authority in charge of public contracts shall include:

- (a) the tender notice drafted in English and French;
- (b) the general regulations governing the tender;
- (c) the special regulations governing the tender comprising the criteria, sub-criteria or bid evaluation grids and bidders' minimum qualification criteria;
- (d) special administrative clauses;
- (e) special technical clauses for works contracts;
- (f) terms of reference for intellectual service contracts;
- (g) special technical specifications for supplies contracts;
- (h) the unit price list, where applicable;
- (i) the detailed cost estimate, including the quantities to be executed or the estimates list where, for some study contracts, the bidder must supply the quantities in accordance with the working method envisaged;



- (j) the price sub-detail schedule or specification pricing, where applicable;
 - (k) model forms for bids and bonds and, where applicable, for supplies and their origin;
 - (l) where applicable, technical documents or any other document deemed necessary by the ProjectOwner.
- (2) For international invitations to tender, the tender file must, depending on the nature and content of the works to be executed, specify the applicable tax regulations, the indicative list of taxes, duties and charges as well as the implementation and payment method.

Paragraph 2 Tender Notice

ARTICLE 86: (1) The tender notice shall mention in particular:

- (a) the reference of the invitation to tender including the number, the type of invitation to tender, the identification of the public tenders board and the relevant Contracts Control Board, where applicable, the Project Owner or the Delegated Project Owner, the financial year, the date of signature and the subject;
- (b) financing;
- (c) the amount of the budget allocated;
- (d) the type of invitation to tender;
- (e) the place(s) where tender documents can be consulted;
- (f) the conditions for the acquisition of tender documents;
- (g) conditions for disqualifying bids;
- (h) the main criteria for qualification of bidders or evaluation of bids;
- (i) the place, date and deadlines for the submission and opening of bids;
- (j) the period during which bidders are bound by their bids;
- (k) the conditions which the bids must fulfil, especially the amount of the bid bond;
- (l) in the case of division into lots, the maximum number of lots that could be awarded to a bidder.

Paragraph 3 Special Regulations Governing Invitations to Tender

ARTICLE 87: (1) The special regulations governing invitations to tender shall, *inter alia*, specify:



- (a) the presentation and composition of bids;
 - (b) bid admissibility and disqualification conditions;
 - (c) evaluation and qualification criteria;
 - (d) contract award methods;
 - (e) conditions for applying national preference, where applicable.
- (2) For works, supplies and quantifiable service contracts, the qualification criteria shall be binary and must be objective, verifiable and quantifiable.
- (3) For non-quantifiable service contracts, including intellectual services, the bid evaluation criteria shall be based on point-rating and broken down by sub-criteria. The bid evaluation sub-criteria must be objective, verifiable and, as much as possible, qualitative.

SUB-SECTION IV PUBLICATION AND DEADLINE FOR SUBMISSION OF BIDS

ARTICLE 88: (1) The tender notice shall be published in the Public Contracts Logbook of the public contracts regulatory body within 24 (twenty-four) hours of receiving same.

- (2) Publication in other high-circulation outlets and other advertising means such as radio announcements, the print media, specialized press or bill-posting may only be used additionally.
- (3) The relevant tenders board chairperson shall receive a copy of the tender notice from the Project Owner or the Delegated Project Owner within 72 (seventy-two) hours of its signature.

ARTICLE 89: (1) The time-limits granted bidders for submission of bids shall range from 25 (twenty-five) to 50 (fifty) working days, with effect from the date of publication of the tender notice in the Public Contracts Logbook of the public contracts regulatory body.

- (2) Such time-limits may be reduced to 20 (twenty) working days for minor services, in the event of established urgency or requests for quotation, and extended to 90 (ninety) days for international invitations to tender or for complex or major projects.

SUB-SECTION V BIDS

ARTICLE 90: (1) Every bidder shall, subject to Articles 51 and 52 of this Code, include the following in his bids:



- documents providing information on his identity and location, and proof of activity;
 - a copy of the deed empowering him to commit the company;
 - a certificate of non-bankruptcy issued by a competent authority;
 - a certificate issued by the public contracts regulatory body attesting that the bidder is not subject to any exclusion order or forfeiture provided for by the regulations in force;
 - the bid bond whose terms and amount shall be specified in the tender documents, in accordance with the regulations in force, where applicable;
 - a clearance certificate from the competent authorities testifying the payment of taxes, duties, fees, contributions, dues, levies or charges of any kind;
 - a social contribution clearance issued by the government service in charge of social insurance;
 - a grading certificate, where applicable.
- (2) For bidders based outside the national territory, the special regulations governing invitations to tender shall specify the documents they are not required to produce and those they must submit.
- (3) The expiry date of the abovementioned documents must be after the tender notice publication date.
- (4) The validity of the bid bond should overrun that of bids by 30 (thirty) days. It shall be refunded upon publication of the contract award results, save for that of selected bids which shall, where applicable, be replaced by the final bid bond.
- (5) The bid bond may be replaced by a guarantee resulting from a bond issued in accordance with Article 141(1) and (2) of this Public Contracts Code.
- (6) Any establishment having produced a personal and several guarantee shall comply, mutatis mutandis, with the provisions of Article 141(4) and (5) of this Public Contracts Code.
- (7) Instead of the bid indemnity bond, small- and medium-sized enterprises owned and managed by nationals, as well as civil society organizations may produce either a certified cheque, a bank cheque, a legal mortgage or a guarantee by a bank or a financial establishment duly approved in accordance with the instruments in force.
- (8) A bid bond issued by an international financial institution shall be acceptable, provided that the said financial institution formally appoints a local correspondent approved by the minister in charge of finance and which shall stand as guarantor where necessary.
- (9) For services under jobbing orders, certified cheques and bank cheques shall be accepted in lieu of the bid bond.

SUB-SECTION VI ADMISSIBILITY AND OPENING OF BIDS

ARTICLE 91: (1) Administrative documents and technical and financial bids must be submitted in different and separate sealed envelopes.

- (2) The envelopes referred to in (1) above shall bear the number and subject of the invitation to tender and addressed to the Project Owner. They shall not reveal the identity of the bidder.
- (3) The envelopes containing the bids shall be submitted against a receipt at the place specified in the tender notice.
- (4) Upon receipt, the envelopes shall be numbered and dated with indication of time of deposit, and entered in order of arrival in a special register prepared by the public contracts regulatory body. These envelopes shall remain sealed until the moment provided for their opening.
- (5) The start of the bid opening session shall not be later than 1 (one) hour after the time limit for receipt of bids set in the tender documents.
- (6) Bids received after the deadline for submission shall be inadmissible.

ARTICLE 92: (1) The Chairperson of the tenders board shall ascertain that the envelopes are sealed and stamped. He shall open them, quickly check the administrative documents produced by bidders and initial the original copies of the bids and administrative documents.

- (2) He shall read out or invite someone to read out the administrative documents and main items of the bids, in particular, the deadlines and, where applicable, the amounts of financial bids and any rebates granted.
- (3) Attendance at the bid opening session shall be limited to the representatives of bidders and the number of such representatives per bidder shall be 1 (one) even in case of a group of enterprises.
- (4) A bid opening report shall be prepared at the session. The bid opening report shall indicate the admissibility of bids, their administrative compliance, prices, rebates and deadlines. A copy of an extract of the said report to which shall be appended the attendance sheet signed by all the participants shall be handed to each bidder at their request.
- (5) The tenders board's bid opening report shall, where applicable, specify the composition of the evaluation sub-committee. However, all information on the composition shall remain internal to the board.
- (6) The Chairperson of the tenders board shall ensure the safe-keeping of the original copies of all the bids received.



- (7) The Chairperson of the tenders board shall certify a copy of each of the bids submitted, which shall be placed at the disposal of the public contracts regulatory body at the close of the bid evaluation session.
- (8) For bids to be opened in two stages, a sealed copy of the financial bid shall be forwarded to the public contracts regulatory body for safe-keeping.
- (9) Where an administrative bid document is missing or found to be non-compliant during the bid opening session, the bidder concerned shall have 48 (forty-eight) hours to produce or replace the document concerned. However, any bid without bid bond during the bid opening session shall be rejected.
- (10) At the end of the bid opening session, all the bids, including those rejected, shall be handed over to the Evaluation Sub-Committee set up by the tenders board. The Evaluation Sub-Committee shall comprise at least 3 (three) members including 1 (one) representative of the Project Owner or the Delegated Project Owner.

ARTICLE 93: (1) For works, supplies and quantifiable service contracts, administrative documents and technical and financial bids shall be opened just once at the same session.

- (2) For unquantifiable service contracts, including intellectual service contracts, the administrative documents and technical bids shall be opened first. In the second stage, only the financial bids of bidders having scored the required technical mark shall be opened in the presence of the bidders concerned.

SUB-SECTION VII BID EVALUATION

ARTICLE 94: (1) The tenders board shall set a duration for the evaluation of technical and financial bids. Such duration must not exceed 10 (ten) working days for minor projects and where bid opening comprises a single stage, and 15 (fifteen) working days where bids are opened in two stages. For complex and major projects, this duration may be extended to 21 (twenty-one) working days.

- (2) Chairpersons and members of bid evaluation sub-committees shall preferably be chosen from a list of experts approved by the public contracts regulatory body on the basis of their competence and experience in the field concerned by the invitation to tender, and depending on their availability.
- (3) Chairpersons and members of bid evaluation sub-committees must be people of good moral standing, master public contract procedures and regulations and have proven technical skills in the relevant field.
- (4) Chairpersons and members of bid evaluation sub-committees must refrain from any action that may compromise their objectivity and, in any case, must not have any financial, personal or other interest in the contract under review.



ARTICLE 95: (1) The Bid Evaluation Sub-committee shall first determine whether the bidders are eligible and if their bids are complete and substantially comply with the requirements of the tender documents. The disqualification of a bid for non-compliance with the requirements of the tender documents shall be based only on the criteria contained in the special regulations of the tender.

- (2) The Bid Evaluation Sub-committee shall then carry out a detailed evaluation of bids deemed compliant and which meet all the provisions and conditions of the tender document, using only the criteria communicated to the bidders in the tender document or through publication.
- (3) The Chairperson of the tenders board may, on the proposal of the Bid Evaluation Sub-Committee, request bidders or relevant government services or bodies to provide clarifications on bids.
- (4) The clarifications requested and provided in writing shall, in no way, be intended to modify the elements of the bid to make it more competitive.
- (5) The request for clarifications should be intended to:
 - bring out a piece of information contained in the bid;
 - verify the accuracy of the information provided by a bidder from the issuing services, as appropriate;
 - request a bidder to confirm the correction of a calculation error or an omission discovered;
 - provide further explanation on technical aspects not understood by the Evaluation Sub-committee or on the content of price sub-details; or
 - justify bid prices deemed abnormally low.
- (6) The response time for requests for clarification shall not exceed 7 (seven) working days.
- (7) Requests for clarification and replies received shall be presented in a summary report attached to the evaluation report.
- (8) Fraud, forgery and misrepresentation shall lead to the disqualification of the bid.
- (9) In case of discrepancy between the prices in figures and those in words, the prices in words shall prevail.

ARTICLE 96: (1) In addition to the main bid, bidders may submit variants where they are so required or where the tender document explicitly gives them that possibility.

- (2) The tender document shall clearly specify the manner in which variants shall be considered in the evaluation of bids.



ARTICLE 97: For the award of contracts falling within the threshold of jobbing orders, and where the tender documents explicitly so provide, the references of the promoter or of a technical officer in a newly incorporated national small- and medium-sized enterprise shall replace those of the corporate body where the latter does not yet have the required number of years of experience or references.

ARTICLE 98: (1) At the end of its work, the Bid Evaluation Sub-committee shall submit an evaluation report to the tendersboard.

- (2) The evaluation report shall be a single document initialled and signed by all the sub-committee members.
- (3) In case of disagreement, members who do not sign the evaluation report shall express their opinion in a memorandum addressed to the Chairperson of the tenders board with a copy to the Project Owner or the Delegated Project Owner. The Chairperson of the tenders board shall ensure that the said memorandum is attached to the validated evaluation report.
- (4) The evaluation report shall be presented to the tenders board by the Chairperson of the Evaluation Sub-committee or, as appropriate, by a member of the said Sub-committee duly designated by the Evaluation Sub-committee Chairperson.

SUB-SECTION VIII AWARD OF PUBLIC CONTRACTS

ARTICLE 99: Subject to fulfilling the bid compliance conditions:

- (a) quantifiable works, supplies and service contracts shall be awarded to the bidder whose bid fulfils the required technical and financial criteria and is deemed to be the lowest;
- (b) contracts for unquantifiable services, including intellectual services, and contracts based on tenders with design competition shall be awarded to the lowest bidder who meets the required technical, financial and/or aesthetic criteria.

ARTICLE 100: (1) Where a contract comprises several types of services, the nature of the said contract shall be determined by that of the service with the highest amount.

- (2) The award criteria for contracts for minor works that can be executed by national micro-, small- and medium-sized enterprises shall take into account the track record of the bidder for similar works and his location.



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

- (2) The Project Owner or the Delegated Project Owner shall, from the date of receipt of the final award proposal of the relevant tenders board, have 5 (five) working days within which to sign the award decision and publish the results, save in case of suspension of the procedure.
- (3) The Project Owner or the Delegated Project Owner shall publish the tender results in the Public Contracts Logbook of the public contracts regulatory body, stating the bid amount and the contract execution period.
- (4) The successful bidder shall have 15 (fifteen) working days with effect from the date of receipt of notification to register the contract or jobbing order. Beyond this deadline, the Project Owner or the Delegated Project Owner shall reserve the right to cancel the award decision after a formal notice issued to the successful bidder remains unheeded. In that case, the bid bond shall be forfeited and the contract awarded to the second-placed bidder.
- (5) Unsuccessful bidders shall be requested to withdraw their bids within 15 (fifteen) working days, except for the successful bidder, where applicable. Bids that are not withdrawn within this period of time may be destroyed without any grounds for complaint.
- (6) Upon publication of the contract award results, the Project Owner or the Delegated Project Owner shall forward a copy of the evaluation report to each bidder who so requests.

ARTICLE 102: (1) The Project Owner or the Delegated Project Owner may cancel an invitation to tender without any grounds for complaint. However, where the bids have already been opened, such cancellation shall be subject to the approval of the public contracts regulatory body.

- (2) The Project Owner or the Delegated Project Owner shall notify the relevant tenders board chairperson of his contract cancellation decision and copy the public contracts regulatory body and the authority in charge of publiccontracts.
- (3) The Project Owner or the Delegated Project Owner shall publish the decision referred to in Article 102 (2) above through insertion in the Public Contracts Logbook of the public contracts regulatorybody.

ARTICLE 103: (1) An invitation to tender may be declared unsuccessful only where:

- (a) no bid has beenreceived;
- (b) after evaluation, no bid is deemed to have fulfilled the requirements of the tender documents or where no financial bid is compatible with the fundingavailable.



- (2) Where the financial bid of the best placed bidder exceeds available funds, the Project Owner or the Delegated Project Owner shall award the contract to the second- placed bidder whose technical and financial bids are deemed satisfactory.
- (3) Where only one bid is deemed technically admissible, but the financial offer exceeds available funds, the Project Owner or the Delegated Project Owner may initiate negotiations with such a bidder in order to reach a satisfactory agreement.
- (4) Where all the financial bids submitted that meet technical requirements exceed available funds, the Project Owner or the Delegated Project Owner may suspend the procedure to source additional funds or start negotiations with the bidders concerned by order of bid rankings.
- (5) The Project Owner or the Delegated Project Owner shall ensure that the time required to source financing or to carry out negotiations does not exceed the bid validity period provided for in the tender documents, or formally obtain its extension, as appropriate.
- (6) Negotiations with bidders should not be intended to substantially modify the scope, nature, content and quality of services. At any rate, the financial incidence of modifications to the bid may not exceed 15% (fifteen) percent of the bid.
- (7) Any negotiation initiated, irrespective of its outcome, shall be recorded in a report signed by both parties and a copy forwarded to the public contracts regulatory body.
- (8) Under no circumstance should negotiations concern unit prices or conducted with more than one bidder at the same time.
- (9) The Project Owner or the Delegated Project Owner shall publish the decision declaring an invitation to tender unsuccessful and notify same to the chairperson of the tenders board concerned and copy the public contracts regulatory body.
- (10) In case of division into lots, the provisions of the paragraphs above shall apply to each lot.

ARTICLE 104: (1) The Project Owner or the Delegated Project Owner may, with the approval of the Authority in charge of public contracts, and as long as the contract award has not been notified, cancel an award decision without any room for complaint.

- (2) The cancellation decision shall, as appropriate, be published in accordance with the provisions of Article 102(3) of this code.



ARTICLE 105: (1) A tenders board may request the Project Owner or the Delegated Project Owner to disqualify bids deemed abnormally low, provided that the bidder concerned had been requested to produce written justification and such justification having been deemed inadmissible.

(2) Requests for justification, as well as answers provided shall, among others, relate to:

- (a) the price breakdown and content, consistency between prices and the construction methods and/or proposed schedule;
- (b) product manufacturing methods, service delivery conditions and construction processes;
- (c) the bidder's comparative advantages or exceptionally favourable terms for the execution of works, supply of goods or delivery of services;
- (d) the originality of the project or works;
- (e) measures relating to working conditions.

(3) Where the justifications provided by the bidder are deemed inadmissible, the public contracts regulatory body shall examine them and submit its findings to the Project Owner or the Delegated Project Owner within 7 (seven) working days, with effect from the date of submission of the file by the Project Owner or the Delegated Project Owner.

(4) The Project Owner or the Delegated Project Owner shall consider the opinion of the public contracts regulatory body in taking a decision.

SUB-SECTION IX NATIONAL PREFERENCE

ARTICLE 106: (1) In case of equivalent bids during contract award under international competitive bidding, a preference margin shall be granted, in order of priority, to bids submitted by:

- (a) a natural person of Cameroonian nationality or a corporate body governed by Cameroonian law;
- (b) a company all or majority of whose capital is held by persons of Cameroonian nationality;
- (c) a natural person or corporate body carrying out economic activities in Cameroon;
- (d) consortiums comprising Cameroonian enterprises.

(2) Bids shall be considered equivalent where they fulfil the required technical specifications.

- (3) Concerning contracts for the supply of quantifiable works or services, the national preference margin shall be 10% (ten percent) for the companies referred to in (1) above.
- (1) Regarding supply contracts, the national preference criterion shall only apply where at least 15% (fifteen percent) of the said supplies are processed locally or regionally.
- (2) National preference shall not apply to unquantifiable service contracts, including intellectual services.
- (3) National preference shall only apply where the tender file so provides.

SUB-SECTION X SIGNATURE AND NOTIFICATION

ARTICLE 107: (1) The Project Owner or the Delegated Project Owner shall sign the contract within 5 (five) working days, with effect from the date of draft contract subscription by the successful bidder.

- (2) He shall notify the contract holder within five (5) working days following the date of signature thereof.

SECTION II CONTRACTS AWARDED BY MUTUAL AGREEMENT

ARTICLE 108: A contract shall be awarded by mutual agreement where it is concluded without any invitation to tender, after the prior authorization of the Authority in charge of public contracts and according to the procedure set forth in Articles 110 and 111 if this code.

ARTICLE 109: (1) Contracts may be awarded by mutual agreement only in one of the specific cases listed below, namely,

- (a) for needs that can only be met through a service requiring the use of a patent, a process, know-how, licence or exclusive rights held by a single contractor, a single service provider or a single supplier;
- (b) to replace defaulting contractors or suppliers, in case of emergency;
- (c) for works, supplies or services or intellectual services which, in case of extreme emergency due to force majeure, cannot be subjected to a competitive bidding procedure time limit;
- (d) for supplies, services or works intended to supplement those initially executed under an initial contract by the same contract holder, provided that the initial contract was awarded following a competitive bidding procedure and that the supplementary contract resulting therefrom concerns only



supplies, services or works not provided for under the initial contract, but that were made necessary by unforeseen and external circumstances beyond the control of the parties, and that the said supplies, services or works cannot be technically or economically separated from the main contract.

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

- (2) The Authority in charge of public contracts shall examine the request and notify its response.
- (3) In case of approval, the Project Owner or the Delegated Project Owner shall conduct direct consultation, without the obligation to make it public, of at least 3 (three) companies, except in the case referred to in Article 109(a) and (d) of this Public Contracts Code.

Article 111: (1) The tender documents, bids and the authorization to award by mutual agreement shall be submitted to the tenders board for review. The board shall have 7 (seven) working days to make its award proposal.

- (2) For contracts that are not within the remit of the Contracts Control Central Board, the Project Owner or the Delegated Project Owner shall award the contract.
- (3) For contracts referred to in Article 109 (c) of this code, the Contracting Authority or Delegated Contracting Authority shall directly award the contract once the authorization of the Authority in charge of public contracts is granted. In this case, the draft contract, together with the authorization to award by mutual agreement, the bid documents, the successful bidder's bid and the evaluation report shall be submitted to the tenders board for its opinion. The board shall have 5 (five) calendar days to give its opinion.
- (4) For contracts other than those referred to in Article 111(2) above, the Contracting Authority or Delegated Contracting Authority shall forward the tender documents and the successful bidder's bid and administrative file to the competent Central Public Contracts Control Board for its opinion. The Board shall have 7 (seven) working days to give its opinion.
- (5) Pursuant to Article 51 of this code, the selected bidder must provide an administrative file prior to the final award of the contract.
- (6) With the exception of contracts awarded by mutual agreement that were included in the contracts award plan, the Contracting Authority or Delegated Contracting Authority shall, with effect from the date of the grant of prior authorization by the Authority in charge of public contracts, have 30 (thirty) working days for the cases referred to in Article 109 (a) and (d) of this code,



and 45 (forty-five) days for the cases referred to in Article 109 (a) and (d) of this code, to sign and notify the corresponding contract to the successful bidder, under pain of expiry of the authorization to award the contract by mutual agreement.

SECTION III REQUEST FOR QUOTATION

ARTICLE 112: (1) A request for quotation is a simplified tender procedure for consulting companies and civil society organizations for the award of jobbing orders that do not require the bidder to propose an execution methodology and whose verification for compliance with some technical specifications does not require evaluation by an evaluation sub-committee.

(2) Services that may be subject to quotation shall include:

- supplies, expendables and sundry materials;
- furniture;
- tools and light equipment;
- computer hardware;
- lightweight rolling stock;
- routine maintenance of public buildings and minor structures;
- manual clearing of roadsides, notably bush clearing, weeding, cleaning of engineering structures and gutters, and waste disposal;
- treatment of critical points of earth or tarred roads;
- manufacturing and/or laying of cobblestones under labour-intensive works;
- quantifiable services including guarding and maintenance of green spaces.

(3) Qualification criteria shall, as appropriate, include supporting documents for after-sales services.

ARTICLE 113: (1) Bidding shall be open to service providers operating in the relevant sector who fulfil the qualification criteria contained in the request for quotation.

- (2) Requests for quotation shall be prepared by the Project Owner based on standard documents designed by the public contracts regulatory body.
- (3) The consultation notice shall be published under the same conditions as those of open invitations to tender.
- (4) Quotations shall be determined on the basis of the technical features and the bill of quantities prescribed by the Project Owner.



- (5) The Project Owner shall receive the bids and forward them to the tenders board for opening, verification of compliance with technical specifications and comparison.
- (6) The tenders board shall propose award of the contract to the bidder whose bid fully complies with the administrative, technical and lowest bid requirements.
- (7) The Project Owner shall award the contract and publish the results in accordance with the provisions of Article 102 of this code.
- (8) The Project Owner shall forward a copy of the contract award decision to the public contracts regulatory body.

SECTION IV PROCEDURES SPECIFIC TO SOME CONTRACTS

SUB-SECTION I FRAMEWORK AGREEMENTS

ARTICLE 114: (1) Framework agreements which set minimum and maximum supplies or services that may be ordered over a given period and executed as purchase orders are issued shall be concluded with only one service provider by lot, following an open invitation to tender.

- (2) Purchase orders shall be issued without any negotiation or reopening of competition, in accordance with the conditions expressly provided for under the contract.

ARTICLE 115: (1) Framework agreements leading to subsequent blanket contracts shall be concluded with at least 3 (three) service providers by lot, who were prequalified following a call for bids and based on their track record in the relevant area.

- (2) The prequalification procedure shall be submitted to the competent tenders board for review.
- (3) For each subsequent blanket contract, the Project Owner shall conduct consultations with framework agreement holders or, where the framework agreement is divided into several lots, holders of the lot corresponding to the blanket contract relating thereto, in accordance with the terms set forth in the framework agreement.
- (4) The framework agreement may provide that the award of certain blanket contracts shall not give rise to reopening of competition where it is noticed that the contract can be executed by only one of the prequalified service providers, subject to prior authorization by the Authority in charge of public contracts.

ARTICLE 116: (1) Framework agreement consultation files shall be submitted to the relevant tenders boards for review.



SUB-SECTION II INDIVIDUAL CONSULTANTS

ARTICLE 117: (1) Individual consultants shall be natural persons recruited by the Project Owner or the Delegated Project Owner on account of their competence in providing intellectual services not requiring a multidisciplinary team.

- (2) Individual consultants shall be selected on the basis of their qualifications with respect to the nature of the task to be performed.
- (3) Consultants shall be selected by comparing the qualifications of those who expressed interest in performing the task following a call for expression of interest laying down the recruitment conditions.
- (4) To be shortlisted, consultants must fulfil all the required relevant minimum qualifications. Those selected for recruitment must be the most qualified and capable of successfully performing the task. Their abilities as presented in their curriculum vitae shall be assessed based on their certificates, their previous experience and, if necessary, their knowledge of the local context.
- (5) The Project Owner shall draft the pre-selection report ranking the candidates by order of merit. The report and draft contract shall be forwarded to the relevant tenders board for adoption.
- (6) Upon adoption of the report referred to in (4) above, the Project Owner shall forward the terms of reference of the task to be performed to the best ranked candidate and request his financial proposal in order to start negotiations on the work methodology and, eventually, unit prices.
- (7) Where negotiations are unsuccessful, the Project Owner shall invite the next qualified candidate on the list for negotiations.
- (8) Where the partners or permanent staff members of a consulting firm tender as individual consultants, the provisions relating to conflicts of interest contained in this code with regard to their parent company shall also apply to them.

ARTICLE 118: The recruitment of individual consultants shall fall under jobbing orders.

SUB-SECTION III CONTRACTS AWARDED BY INVITATION TO TENDER WITH DESIGN COMPETITION

ARTICLE 119: (1) For contracts awarded through invitation to tender with design competition, the tenders board shall first open the envelopes containing the administrative documents and artistic proposals.



- (2) After the opening of bids received, the tenders board shall set up a jury to evaluate the projects.
- (3) The jury shall comprise mostly representatives of the professions concerned and at least one representative of the Project Owner.
- (4) Secondly, only technical bids comprising the estimated provisional project cost, the bidder's references and the overall project cost of bidders who obtained the required minimum score for the competitive design proper shall be opened in the presence of the bidders concerned.
- (5) Before expressing its opinion, the jury may also, in writing or any appropriate means, invite bidders to provide any clarifications concerning their bid.
- (6) The jury may consult any expert or technician to enlighten it on specific points of the proposed projects, and/or assign a sub-committee to review the bids before expressing its opinion.
- (7) The jury may also request one or more bidders to make changes to their projects. Such changes may relate to the design and/or implementation of projects, eventually with resulting cost difference. The processes and costs proposed by bidders may not be disclosed to other competing bidders during discussions.

ARTICLE 120: (1) The jury shall evaluate and rank the bids based on the criteria set forth in the design competition as follows:

- (a) Where the invitation to tender with design competition deals only with project design, the jury shall rank the projects according to their technical and aesthetic values, their overall cost, in accordance with the criteria laid down in the design competition regulations.

The overall score shall be the sum of the technical score and the score of the estimated overall project cost, using the weighted method provided for in the tender file.

- (b) Where the design competition concerns the cases provided for in Article 80(1)(b), (c) and (d) above, the jury shall review and assess the said projects on the basis of the technical and aesthetic value of each project, its overall cost, as well the conditions for its eventual implementation, using the criteria laid down in the design competition regulations.

As appropriate, the jury of the design competition shall, together with the shortlisted competitors, finalize the terms of the contract to be awarded for the conduct of a study and/or the monitoring and control thereof.

The jury shall evaluate the bids and determine the most cost-effective. To that end, it shall sum up the scores obtained by each competitor with regard to the design competition proper, the overall project cost estimate and the financial bid, using the weighted method provided for in the tender documents.

- (2) After ranking the bids, the jury shall, using any communication medium stating the exact date, request the highest ranked competitor to:



- (a) confirm the correction of the clerical errors noted;
 - (b) regularize the discrepancies noted.
- (3) In this regard, the jury shall grant the competitor a period of not be less than 7 (seven) working days, with effect from the date of completion of evaluation of the proposed projects.
- (4) After reviewing the documents and answers received, the jury shall:
- (a) propose that the tenders board should select the successful bidder concerned:or
 - (b) propose that the tenders board should exclude the competitor concerned where he;
 - fails to respond within the prescribed period, to confirm the corrections requested or to regularize the discrepancies noted;
 - submits a financial bid signed by a person not authorized to commit him or expresses restrictions or reservations.
- (5) In this case, the jury shall request the second highest ranked bidder, review the documents and answers received and either select or exclude him under the conditions set forth in (b)above.
- (6) Where the jury does not select the second highest ranked bidder concerned, it shall invite the bidder ranked next, review his documents and answers under the same conditions as above until the procedure is completed or the design competition is declared unsuccessful.

ARTICLE 121: (1) The design competition jury shall draft a report on each of its meetings. The report, which shall neither made public nor disclosed to the competitors, shall mention the records of the jury's discussions with bidders and, as appropriate, the remarks or objections of jury members or bidders, as well as the jury's opinion on the said remarks or objections.

- (2) The report signed by the chairperson and members of the jury should comprise the final results of the design competition and state the reasons for the disqualification of the unsuccessful bidders, as well as reasons for the jury's choice.
- (3) The report of experts, technicians or sub-committees, if any, shall be attached to the jury's report.
- (4) The jury shall adopt the final ranking of the selected bids and submit its proposals to the tenders board to allocate the bonuses provided for in the design competition terms and conditions and/or award the contract to the selected competitor, as the case maybe.



SECTION V DEMATERIALIZATION OF PROCEDURES

ARTICLE 122: (1) Contract award procedures may be dematerialized using electronic means.

- (2) Dematerialization should, among other things, comply with:
- (a) the use of an adequate information system that ensures the integrity, confidentiality and authenticity of information;
 - (b) an electronic signature system.
- (3) The terms and conditions for dematerialization shall be laid down by a separate 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) Each contract shall be a single document printed on the first side of the page.

- (2) Public contracts and their amendments shall be notified by the Project Owner or the Delegated Project Owner.
- (3) Each public contract shall be notified before commencement of execution.
- (4) Consequently, any claim regarding the supply of goods or services prior to contract notification shall be inadmissible.
- (5) Upon notification of the contract to the allottee, the Project Owner or the Delegated Project Owner shall have 15 (fifteen) calendar days within which to issue the administrative order to commence service delivery.
- (6) The Project Owner or the Delegated Project Owner shall send a copy of the service order to commence service delivery to the public contracts regulatory body and to the Ministry in charge of public contracts within 7 (seven) calendar days, with effect from the date of its notification.



SECTION I CONTENT OF PUBLIC CONTRACTS

ARTICLE 124: Each public contract shall contain at least the following information:

- (a) the contract purpose and number;
- (b) means of funding the expenditure and budgetary charge;
- (c) the contracting parties;
- (d) the Project Owner and/or Delegated Project Owner;
- (e) the Contract Manager and the Contract Engineer;
- (f) evidence of the capacity of the signatory to the contract and of the contracting party;
- (g) listing, in order of priority, of the constituent documents of the contract, including the bid or commitment document, the special administrative clauses, the technical specifications or terms of reference, the estimates or detailed estimates, the list of unit prices, the price sub-details and the general administrative clauses to which it is specifically subjected;
- (h) the contract amount, together with the conditions for its determination as well as the possible conditions for its revision or updating;
- (i) fiscal and customs obligations;
- (j) execution period and place;
- (k) conditions for constituting and refunding guarantees;
- (l) notification date;
- (m) the bank domiciliation of the Administration's contracting partner;
- (n) service acceptance or delivery conditions;
- (o) service payment methods;
- (p) the accounting officer responsible for payment;
- (q) dispute settlement conditions;
- (r) conditions for termination of contracts;
- (s) the competent court and applicable law.

ARTICLE 125: (1) The Project Owner or the Delegated Project Owner shall draft or formalize the final contract documents.

- (2) The final contract may, under no circumstances, change the scope and nature of services provided for in the bidding document. Only minor adjustments without financial incidence or technical impact on the bid selected shall be accepted.



SECTION II ACCOUNTING OBLIGATIONS

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

- (a) a special contract accounting document showing the various sources of financing, the statements of billed and paid sums, as well as the source(s) of financing.
 - (b) a statement of tax and customs returns related to the contract.
- (2) Authorized control bodies may, for audit purposes, have access to the accounting documents referred to in (1) above for a period of up to 3 (three) years with effect from the date of final acceptance of services or the date of the last delivery under the contract concerned.
- (3) The specifications referred to in Article 130 of this code shall be expressly stated to in the contract.

ARTICLE 127: The accounts of the Administration's contracting partner should trace the transactions relating to the contract as follows:

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

ARTICLE 128: Project Owners or Delegated Project Owners shall be bound to keep up-to-date public contracts accounting records, prepared in compliance with standards generally accepted in Cameroon. Based on convincing supporting documents, such accounting records must clearly indicate, among other things:

- (a) the commitments provided for per contract during the financial year or the corresponding budgets;
- (b) the sources of financing;
- (c) the contracts awarded during the financial year;
- (d) the bills received and approved;
- (e) the amounts of money paid.



SECTION III SPECIFICATIONS

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

- (a) the general administrative clauses which lay down the provisions concerning the execution and control of public contracts applicable to a whole category of contracts;
- (b) the special administrative clauses which lay down the financial and administrative provisions specific to each contract;
- (c) all other technical clauses and general and specific documents defining the characteristics of the works, supplies or services.

SECTION IV CHANGES DURING CONTRACT EXECUTION

ARTICLE 130: (1) Public contract provisions may be changed only through contract amendments.

- (2) However, contract amendments may not change the purpose, the allottee, the payment currency, or the price revision or updating formula.
- (3) Contract amendments shall be examined and adopted by the tenders boards having jurisdiction over the initial contract.
- (4) The overall amount of contract amendments shall not exceed 30 (thirty) per cent of the initial contract amount.
- (5) Service orders having an incidence on prices or time limits shall constitute the contractual management documents of a contract and shall be issued under the following conditions:
 - (a) where a service order is likely to cause contract price overrun, the signing thereof shall be subject to evidence of financing by the Project Owner;
 - (b) in case of contract price overrun, changes may be made only through a contract amendment, and the additional services to be delivered may be paid only after signature of the contract amendment;
 - (c) service orders for additional delivery of services may be signed by the Project Owner or the Delegated Project Owner and regularized subsequently through a contract amendment, provided the financial incidence is less than 10 (ten) per cent of the contract amount.
- (6) In any case, any modification concerning the technical specifications shall be subject to a prior study on the contract scope, cost and time limits.



- (7) Variations in the quantity of services performed shall be taken into account under the conditions set forth in the general administrative clauses.

SECTION V SUB-CONTRACTING

ARTICLE 131: (1) Any public contract may give rise to sub-contracts or subsidiary orders under the conditions laid down in this code and in the general administrative clauses, subject to prior authorization by the Project Owner or the Delegated Project Owner.

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

ARTICLE 132: (1) In case of compulsory recourse to sub-contracting, the bid documents shall, from the outset, indicate the nature of the services to be sub-contracted.

- (2) The proportion of services that may be sub-contracted under a public contract shall be determined by the general administrative clauses.
- (3) Service provision shall be sub-contracted primarily to local small- and medium-sized enterprises (SMEs) in which nationals hold at least 51 (fifty-one) percent of the capital or, failing that, to SMEs and large enterprises in which nationals hold at least 33 (thirty-three) percent of the capital.
- (4) A separate instrument of the Authority in charge of public contracts shall establish, by area of activity, the list of services whose supply may besub-contracted.

ARTICLE 133: (1) Any bidder who intends to execute a public contract using one or more sub-contractors must, at the time of bidding, specify in his bid the nature and the amount of each of the services the delivery of which he intends to sub-contract.

- (2) Where the amount of services whose delivery is to be sub-contracted is more than or equal to 10 (ten) percent of the total contract amount, the bidder shall be bound to attach to his bid documents that enable the assessment of the sub-contractor's technical and financial capacity.

ARTICLE 134: (1) To obtain the authorization or approval of a sub-contractor, the main contractor shall submit or send to the Contracts Manager by registered mail, a file comprising notably:

- (a) the nature of services the delivery of which is to besub-contracted;
- (b) the name, corporate or business name and address of the proposed sub- contractor;

- (c) the references of the sub-contractor in the given area;
- (d) the draft sub-contract.

- (2) The sub-contract must comply with the commitments of the main contractor.
- (3) Where the sub-contractor must be paid directly, the main contractor shall be bound, during request for authorization, to establish that the transfer or securitization of contract claims shall not impede the direct payment of the sub-contractor.

SECTION VI JOINT CONTRACTING

ARTICLE 135: (1) Joint contracting shall be when the services under a contract are performed by separate contractors belonging to a business grouping.

- (2) In case of joint contracting, the tender documents shall specify the conditions under which bidders shall submit bids.

ARTICLE 136: (1) The special administrative clauses shall specify whether the contractors in the business grouping are acting jointly or severally.

- (2) Business groupings shall be considered as acting jointly where each of them is bound by the entire contract and must make up for possible failures by partners. One of them must be designated in the special administrative clauses as representative of the business grouping vis-à-vis the Project Owner or the Delegated Project Owner. The joint- contractors shall share the amounts of money paid by the Administration into a single account.
- (3) Business groupings shall be considered as acting severally where services have been divided into lots and each of the contractors is assigned and committed to a lot or lots. One of the contractors shall be designated in the special administrative clauses as representative who shall be jointly liable with each of the other contractors in the contractual obligations towards the Project Owner or the Delegated Project Owner. The representative shall represent all the several contractors before the Project Owner or the Delegated Project Owner for the execution of the contract. The Administration shall pay each contractor through his own account.

SECTION VII GUARANTEES

ARTICLE 137: Subject to the provisions of Article 143 of this code, each contract holder shall be bound to provide:



- (a) a security as guarantee for the complete execution of the contract, hereinafter referred to as the "finalbond";
- (b) a security as guarantee, where applicable, for the proper execution of the contract and the recovery of the amounts of money for which the holder may be liable with respect to the contract, in replacement of the "retention bond" to be deducted from the payments on account made by the Administration's contracting partner, hereinafter referred to as the "performance bond".

ARTICLE 138: (1) The final bond may not be less than 2 (two) percent or more than 5 (five) percent of the initial value of the contract, increased, as appropriate, by the amount of the contract amendments.

- (2) The retention bond shall be deducted or the performance bond constituted where the contract has a guarantee or maintenance period. It may not be more than 10 (ten) percent of the initial value of the contract, increased, as appropriate, by the amount of the contract amendments.
- (3) The performance bond or proper performance guarantee shall not be required for intellectual service contracts.

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

- (2) The validity of the final bond must cover the period for the delivery of services up to their provisional acceptance.
- (3) The validity of the performance bond must cover the guarantee or maintenance period stated in the contract up to final acceptance.
- (4) The terms and conditions and deadline for the refund of securities shall be fixed by the general administrative clauses, subject to the exemptions that could be introduced by the special administrative clauses.

ARTICLE 140: (1) The security may be replaced by a bond issued to the Project Owner or the Delegated Project Owner by a banking institution authorized in accordance with the instruments in force, or by a personal joint and several guarantee.

- (2) Public contract holders must provide guarantees from financial institutions approved by the Minister in charge of finance or that have a local correspondent approved by the said Minister.
- (3) Small- and medium-size enterprises with national share capital and managed by nationals, as well as civil society organizations may, in lieu of security, provide a certified cheque, bank cheque, a legal mortgage or a bond issued by a banking institution or financial institution authorized in accordance with the instruments in force.



- (4) Any entity having produced a joint and several personal guarantee or any banking institution referred to in (1) above must undertake to pay, on the orders of the Project Owner or the Delegated Project Owner and up to the amount guaranteed, sums for which the Administration's contracting partner may be liable under the contract.
- (5) The provisions of (1), (2) and (3) above shall be implemented in accordance with the rules laid down by the Project Owner or the Delegated Project Owner.

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

- (a) the final bond shall be refunded after a release order issued by the Project Owner or the Delegated Project Owner with effect from the final acceptance of the works, supplies or services, where the contract does not have a guarantee deadline, or from the provisional acceptance where the contract has such period.
 - (b) the retention bond shall be released or the performance bond refunded after a release order issued by the Project Owner or the Delegated Project Owner with effect from the final acceptance of the works, supplies or services after the expiry of the guarantee period.
- (2) Upon expiry of the 30 (thirty) calendar days, the competent body shall be bound to refund the bonds or release the retention bond referred to in (1) above at the request by the Administration's contracting partner.
 - (3) Upon expiry of the period referred to above, the bonds shall cease to have any effect, even in the absence of the release, unless the Project Owner or the Delegated Project Owner has duly notified the contracting partner that he has not fulfilled all his obligations.
 - (4) In this case, the bond commitment may cease to have effect only following a release order issued by the Project Owner or the Delegated Project Owner.

ARTICLE 142: Holders of jobbing orders may be exempted from the obligation to produce the securities provided for in Article 137 of this code.

SECTION VIII INSURANCE POLICY

ARTICLE 143: (1) Where it is provided for in the Special Administrative Clauses, a contract holder shall be bound to take out, upon notification of the contract, an insurance policy from one or more approved insurance companies to cover risks related to the provision of services under his contract.



- (2) In any case, the policy must cover all bodily, material and immaterial damage caused to third parties or facilities immediately after its subscription right up to final acceptance of services or after 10 years, as appropriate.
- (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 located in Cameroon from a foreign insurance company which does not conform to the prescriptions of the CIMA Insurance Code.
- (4) Any contract holder of foreign nationality or governed by foreign law who takes out in his country of origin an insurance policy against export risks shall be bound to forward the said insurance policy to the Project Owner or the Delegated Project Owner and to the Autonomous Sinking Fund, as appropriate, within 2 (two) months from the date of notification of the contract.
- (5) He shall be bound to inform the authorities and body referred to in (4) above of any potential claim.

CHAPTER II PUBLIC CONTRACT PRICES

SECTION I PRICE FEATURES

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

- (2) Services covered by the contract shall be paid for either by all-in prices applied to all or part of the contract, irrespective of the quantities, or by unit prices applied to the quantities effectively supplied:
 - (a) An all-in price shall be any price which remunerates the contract holder for a series of services, a facility or part of a facility as defined in the contract. An all-in price shall be imposed once all services are well defined during the conclusion of the contract.
 - (b) A unit price shall be the price of an element of a service, of a type or an item of a facility, the quantities of which are estimates in the contract.

ARTICLE 145: (1) An all-in or unit price shall be firm where it cannot be modified because of foreseeable economic changes during the service provision period.

- (2) In cases contrary to the provisions of Article 145(1) above, the price shall be revisable.



SECTION II CONTRACT PRICE VARIATION

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

- (2) The price of any contract whose execution duration is equal to 12 (twelve) months at most may not be revised.
- (3) The price of services shall be liable to revision once the contract provides for the modification of the initial cost in the course of execution.
- (4) Except in the case of a waiver following negotiation between the Project Owner or the Delegated Project Owner and the contract holder, the price must be updateable where the contract has a firm price and a period of 6 (six) months has elapsed between the bid opening date and the contract notification date.
- (5) Where a contract has a firm price, the price may be updateable if an overrun of the initial contract period of more than 2 (two) months is not attributable to the contract holder.
- (6) A contract shall be revisable or updateable under the conditions laid down in (3), (4) and (5) above.
- (7) Price revision or update pursuant to the contractual clauses shall not give rise to the signing of contract amendments.

SECTION III CONDITIONS FOR REVISING OR UPDATING CONTRACT PRICES

ARTICLE 147: (1) The conditions for revising and updating prices must be explicitly provided for in the initial contract.

- (2) Any revisable price contract must include:
 - (a) a single price revision formula applicable to all services;
 - (b) several comprehensive independent formulas, each of them applicable to a service whose price is separate in the contract;
 - (c) or a formula by payment currency, if there are several currencies, using the price-fixing indexes of the country of origin of their puts.
- (3) Revision formulas must include a fixed part of at least 0.15 (zero point one five).



- (4) The revision threshold shall represent a percentage from which the overall contract price variation gives entitlement to price revision.
- (5) The neutralisation margin shall be the increase share which, in any case, shall be borne by the contract holder or, conversely, the decrease share from which he benefits.
- (6) The neutralisation margin shall always be less than or equal to the revision threshold.
- (7) The neutralisation margin shall be deducted from the revision coefficient.
- (8) The coefficient of revision shall apply to:
 - (a) services provided during the month, deductions of any type relating to works done under State supervision, bonuses, and repayment of State advances applicable to the revised amount;
 - (b) penalties;
 - (c) interest on overdue payments.
- (9) It shall be forbidden to introduce a price revision clause by way of amendment in a firm price contract.
- (10) Where a contract includes a price revision clause, it must specify the date of fixing of the initial price, as well as the terms and conditions for revising the said price.
- (11) The update formula devised in accordance with this Article may not include any neutralisation margin.
- (12) The public contracts regulatory body shall, in conjunction with the Project Owner or the Delegated Project Owner and other government services concerned, verify the statement of amounts resulting from price update and revision duly approved by the Contract Engineer and the Contract Manager, prior to any payment.
- (13) It shall give its opinion within 15 (fifteen) days upon receipt of the file.
- (14) In any case, the price revision or update shall be capped at 25% (twenty-five percent) of the contract amount, under pain of cancellation, unless waived by the Authority in charge of public contracts.

However, where the parties do not wish to terminate the contract, they may either agree to fully execute the contract up to this ceiling price, modify, through amendment, the price variation formula to comply with the above-defined ceiling, or negotiate a new reduced price.



SECTION IV WORKS EXECUTED UNDER STATE SUPERVISION

ARTICLE 148: (1) Where a contract includes services provided under State supervision, such services shall be provided at the behest and under the responsibility of the Project Owner or the Delegated Project Owner. In this case, the special administrative clauses must specify the nature, method of payment on account and values of the various elements that contribute to determining the payment price.

(2) The amount of works executed under State supervision referred to in (1) above shall not exceed 2% (two percent) of the contract amount, inclusive of taxes.

ARTICLE 149: (1) In the event of a duly established default on the part of the Administration's contracting partner, the Project Owner or the Delegated Project Owner may, where it does not terminate the contract, and after the written authorization of the Authority in charge of public contracts, prescribe total or partial supervision of the expenses and risks of the said contracting partner.

(2) Conditions for executing works under State supervision shall be laid down by a separate instrument of the Authority in charge of public contracts.

SECTION V PUBLIC CONTRACTS ASSECURITY

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 (1) above shall be in the form of a synallagmatic contract between the Administration's contracting partner and a third party called "secured creditor".

(3) The secured creditor shall notify in writing or serve the Project Owner or the Delegated Project Owner and the accounting officer in charge of payment with a certified true copy of the original security document.

(4) With effect from the date of notification or service referred to in (3) above and except where he is unable 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 was provided for several claimants, each of them shall receive the percentage of the claim assigned to him in the slip, the entries of which shall be notified or served on the accounting officer in charge of payment.



- (6) After the security is notified or served, there may be no modification in the designation of the accounting officer in charge of payment, or the payment terms and conditions, except in this latter case, with the written approval of the secured credit or.
- (7) The secured creditor shall, in writing, grant release of the notifications or service of the security to the accounting officer in charge of payment, custodian of the security document provided for in (3) above. It shall take effect from the second working day following receipt by the accounting officer in charge of payment of the document informing himthere of.
- (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 MONITORING AND CONTROL OF PUBLIC CONTRACTS EXECUTION AND PAYMENT

SECTION I PUBLIC CONTRACTS EXECUTION MONITORING AND CONTROL

ARTICLE 151: (1) Public contracts execution shall be monitored and controlled by:

- (a) the Project Owner or the Delegated Project Owner through the Project Officer, the Contract Engineer and the Project Manager, as appropriate;
 - (b) the Ministry in charge of public contracts through impromptu controls;
 - (c) the Independent Auditor through public contracts ex-post audits;
 - (d) other State control bodies provided for by the laws and regulations inforce.
- (2) Public contracts execution control shall aim to ensure compliance with the quality, comfort, safety and sustainability standards of the facility.
 - (3) Project supervision shall be carried out by a private law natural person or corporate body, for works and supplies contracts of an amount exceeding the thres holds laid down by a separate instrument of the Authority in charge of public contracts.
 - (4) However, the Ministry in charge of public contracts may notify government services with appropriate technical capacity, or whose organic instruments cover engineering studies and control, of its waiver of such private project supervision.



- (5) For contracts of amounts below the price thresholds referred to in (3) above, the Project Owner or the Delegated Project Owner without the required skills must contract a public or private law external project supervisor to control execution.
- (6) Public project supervision shall be carried out by the Contract Engineer.
- (7) The supervision of intellectual service contracts for studies and audits shall be carried out through a follow-up and technical validation committee. This committee shall comprise, among others, members extraneous to the services of the Project Owner or the Delegated Project Owner.
- (8) Where the Project Owner or the Delegated Project Owner does not have qualified personnel to prepare and monitor insurance contract execution, he may use the external expertise of a specialist in the areas covered by the insurance, for the definition of technical specifications of services to be delivered, and/or contract execution monitoring. Where such a professional is required to work as a broker, he must be approved in accordance with the regulations in force.

ARTICLE 152: (1) Pursuant to the provisions of Law No. 99/17 of 22 December 1999 to lay down regulations for the quality control of soils, building materials and geotechnical studies and its subsequent amendments, the execution of contracts subjected to controls shall be contingent upon the production, by the contractor, of a compliance certificate attesting that the said controls were regularly carried out and were satisfactory.

- (2) The certificate shall be issued by the government body in charge of controlling the quality of land and construction material, based on the technical file presented by the supervisor and, as appropriate, by the contractor.

ARTICLE 153: (1) For works contracts whose execution is not controlled by a private project manager, the Project Officer or the Contract Engineer, as well as other stakeholders in the monitoring and control of the delivery of services shall receive an allowance determined by decision of the Project Owner or the Delegated Project Owner.

- (2) This allowance, as well the equipment required for control, shall be charged to the budget of the Project Owner or the Delegated Project Owner.

ARTICLE 154: The public or private project manager shall be bound to forward his monthly and final reports to the Project Owner or the Delegated Project Owner, the Minister in charge of public contracts and the body responsible for public contracts regulation.

ARTICLE 155: The terms and conditions for carrying out public project supervision shall be laid down by a separate instrument of the Authority in charge of public contracts.



SECTION II

ACCEPTANCE COMMITTEES AND FOLLOW-UP AND TECHNICAL VALIDATION COMMITTEES

ARTICLE 156: (1) Services provided under public contracts shall systematically be accepted by a committee whose composition is specified in the Special Administrative Clauses of the contract, and in accordance with the conditions laid down in the General Administrative Clauses for works, supplies, services and intellectual services.

- (2) For works and supply contracts, the acceptance committee shall have jurisdiction to carry out partial, provisional and/or final acceptance.
- (3) For study and audit contracts, acceptance shall be done by a follow-up and technical validation committee.
- (4) The Works Contracts Acceptance or Follow-up and Technical Validation Committee shall, where applicable, verify the existence of compliance certificates, as well as pre-acceptance reports, prior to deciding on the acceptance of works or the technical validation of studies.

ARTICLE 157: (1) Acceptance or follow-up and technical validation must lead to the on- the-spot signing of the acceptance report which shall state whether or not acceptance was decided and, where applicable, mention the reservations to be lifted, together with deadlines, before deciding on the said acceptance.

- (2) To be valid, the acceptance report must be signed by at least 2/3 (two thirds) of members, including the chair person.
- (3) The chairperson, members and rapporteurs shall receive an acceptance and technical validation allowance determined by decision of the Project Owner or the Delegated Project Owner.
- (4) The allowance shall be charged to the budget of the Project Owner or the Delegated Project Owner.

SECTION III

PAYMENT OF PUBLIC CONTRACTS

SUB-SECTION I

COMMON PROVISIONS

ARTICLE 158: (1) Subject to the provisions of loan agreements or conventions or international conventions, any payment under a public contract shall be by bank transfer to a banking institution or an approved first-rate financial institution governed by Cameroonian law, in accordance with the instruments in force, or by letter of credit.



- (2) Drawings on external financing credit shall be subject to prior endorsement by the Autonomous Sinking Fund.
- (3) Any change of bank domiciliation shall be only through contract amendments.
- (4) Transactions carried out by the Administration's contracting partner and likely to give rise to payment of advances, payments on account or final payment, shall be recorded in writing or, as appropriate, in accordance with the terms and conditions specified in the General Administrative Clauses.

SUB-SECTION II ADVANCES

ARTICLE 159: Where expressly provided for in the Special Administrative Clauses, a start-off or supply advance may be granted to the Administration's contracting partner to carry out the operations required for the execution of the services under the contract.

ARTICLE 160: (1) The Administration's contracting partner may, upon simple request to the Project Owner or the Delegated Project Owner, and without any justification, obtain a "start-off" advance whose tax inclusive amount may not exceed 20% (twenty per cent) of the initial contract price for works or intellectual service contracts and 40% (forty per cent) for supply contracts.

- (2) The rates referred to above shall be calculated based on the initial contract amount, or the amounts corresponding to each tranche for tranche contracts.
- (3) In the case of blanket purchase contracts, the start-up advance amount shall be calculated based on the maximum amount budgeted for a given period.
- (4) The start-up advance shall be refunded by deduction from the amounts owed to the contract holder during the execution of the contract, in accordance with the contract terms and conditions. Such refund shall start when the amount of services provided under the contract, expressed in basic price, reaches or exceeds 40% (forty per cent) of the initial price of the contract or of the tranche, and end when the rate reaches 80% (eighty per cent). Where the contract does not provide for payment on account and is subject to payment threshold, the start-off advance shall be deducted once from the single payment
- (5) The start-off advance must be fully guaranteed by a banking institution governed by Cameroonian law or an approved first-rate financial institution, in accordance with the instruments in force.
- (6) The start-off advance referred to in (1) above shall be paid to the Administration's contracting partner in accordance with the terms and conditions laid down in the Special Administrative Clauses.



- (7) The payment provided for in (6) above shall be made after the required guarantees have been provided, in accordance with the provisions of this code.

ARTICLE 161: (1) Advances for supplies may be granted to cover commitments made to execute works, supplies or services under the contract.

- (2) Each contract must determine the special administrative or technical conditions for advance payments, in accordance with the rules provided for in this code.
- (3) Advance payments for supplies shall be made upon production of disbursement supporting documents verified by the Project Owner or the Delegated Project Owner.
- (4) Advance payments for supplies shall be subject to the deposit, on the site or its annex, of materials, raw materials or manufactured objects intended for the execution of the contract provided that;
- (a) they were procured on a freehold basis and effectively paid for by the Administration's contracting partner;
 - (b) they are allotted such as to leave no doubt regarding their destination;
 - (c) they can be inspected by the Project Owner or the Project Manager designated for that purpose.
- (5) Advance payments for supplies made in respect of prior expenditure should be monitored in the co-contractor's accounts until they are cleared. They shall be reimbursed, at a rate stated in the contract, by deduction from the amounts subsequently owed to the holder as payment on account or balance. The reimbursement rate shall consider the proportion of items that gave rise to advance payment in the part of the contract already executed.
- (6) In any case, the company shall be responsible for guarding the materials for which the advance payment for supplies was made until the acceptance of the works.

SUB-SECTION III PAYMENTS ON ACCOUNT

ARTICLE 162: (1) Except by waiver provided for in the Special Administrative Clauses, the Administration's contracting partner may obtain periodic payments on account.

- (2) The conditions for payments on account shall be laid down in the Special Administrative Clauses.



- (3) Any payment on account shall be subject to provision of services under the contract, and accepted under the conditions of Articles 157 and 158 of this code, subject to evidence that they have been paid for by the Administration's contracting partner, where these services were provided by sub-contractors.
- (4) In the event of non-payment of a sub-contractor for services already paid for by the Project Owner, the latter may use coercive measures against the contractor holder, including direct payment to the sub-contractor.

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

- (2) The sub-contractor may be paid by the Project Owner where the amount of the service sub-contracted to a single sub-contractor is more than or equal to 10% (ten per cent) of the total amount of the contract and any amendments thereto, or when it is established that the main contractor is engaged in fraudulent practices vis-à-vis the sub-contractor.
- (3) In case of direct payment by the Project Owner or the Delegated Project Owner, the main contractor shall have fifteen (15) working days, from the date of receipt of invoice supporting documents, to express his acceptance or reasoned refusal. Beyond this deadline, the principal contractor shall be deemed to have accepted the said documents. Notifications shall be sent by registered mail with acknowledgement of receipt or delivered by hand against receipt. The invoice must comply with the commitments stated in the sub-contract.
- (4) Payments to sub-contractors or payments by sub-contracting enterprises or companies to third parties, as remuneration for work done in Cameroon, shall be made in credit institutions approved by the Minister in charge of finance.
- (5) Sub-contracting enterprises shall take out their insurance policies with Cameroon-based insurance companies.

ARTICLE 164: (1) The amount of a payment on account may not exceed the value of the services to which it relates, after deduction of reimbursed advance payments and the retention bond, where applicable. This value shall be assessed in accordance with the contract provisions.

- (2) In case of payments on account made in accordance with the technical execution phases, the contract may fix the amount of each payment on account on a flat-rate basis or as a percentage of the initial contract amount. The deductions referred to in (1) above shall apply under the same conditions.

ARTICLE 165: (1) Payments on account must be made monthly or at an interval agreed between the Project Manager and the Project Owner's representative.



- (2) Payments on account may be spread over the contract period, according to periodic deadlines, or depending on technical execution phases, as specified under the contract.
- (3) Payments on account shall be made no later than ninety (90) working days from the date the reports giving entitlement to payment are forwarded to the competent accountant.
- (4) General or special administrative clauses shall specify the periods allowed for the Project Officer or, where applicable, the Project Manager, to produce the documents giving entitlement to payment on account.
- (5) In any case, the period for making payments on account may not exceed 60 (sixty) working days from the date of forwarding the draft partial payment document to the Project Manager, provided the document does not require correction.

SUB-SECTION IV DEFAULT INTERESTS AND PENALTIES

ARTICLE 166: Where failure to pay within the deadline set in the Special Administrative Clauses is attributable to the Project Owner, the Delegated Project Owner or the paying authority, the contract holder shall as of right be entitled to default interest calculated from the day following expiry of the deadline up to the day of issue of the "settlement" notice by the paying authority.

ARTICLE 167: (1) The default interest rate shall be the corporate lending rate of the Bank of Central African States (BEAC), increased by one (1) point.

- (2) For payments in a currency other than the CFA franc, the default interest rate shall correspond to the discount rate applied by the Bank issuing the currency, increased by at most one (1) point.
- (3) The amount of default interest shall be calculated using the formula below: $I = M \times (n/360) \times (1)$ where:

M = Amount, inclusive of taxes, owed to the holder; N = Number of calendar days of default;

I = BEAC corporate lending rates increased by one (1) point or discount rate applied by the Bank issuing the currency involved, increased by at most one (1) point, as the case maybe.

- (4) Default interest may not apply to amounts already comprising compensation for delayed payments.
- (5) Default interest shall not be taxable.



ARTICLE 168: (1) In case of overrun of the contractual period attributable to the contract holder, he shall be liable to a delay penalty the amount of which shall be fixed as follows, except otherwise specified in the contract:

- (a) $1/2000^{\text{th}}$ (one two thousandth) of the initial contract tax-inclusive amount per calendar day of delay from the first to the thirtieth day beyond the contract period;
 - (b) $1/1000^{\text{th}}$ (one thousandth) of the initial contract tax-inclusive amount per calendar day of delay beyond the thirtieth day.
- (2) For conditional tranche contracts, the periods and amounts to be taken into account shall be those of the tranche under consideration.
 - (3) The remission of contract delay penalties may be decided by the Project Owner or the Delegated Project Owner only after the contract delay penalties of the public contracts regulatory body.
 - (4) A copy of the penalty remission decision, backed by the above-mentioned contract delay penalties, shall be forwarded to the public contracts regulatory body for all intents and purposes.

ARTICLE 169: (1) The penalties for exceeding the contractual period notwithstanding, the contract may provide for specific penalties for non-compliance with the technical and safety measures.

- (2) In any case, the cumulative amount of penalties shall not exceed 10% (ten per cent) of the tax-inclusive amount of the initial contract and its amendments, as applicable, under pain of termination.

PART V LITIGATIONS AND SANCTIONS

CHAPTER I LITIGATION

SECTION I LITIGATION DURING THE AWARD PHASE

SUB-SECTION I PETITIONS BY CANDIDATES AND BIDDERS

ARTICLE 170: (1) Any candidate or bidder who feels aggrieved in the public contract award procedure may file a petition, depending on the stage of the procedure, with the Project Owner or the Delegated Project Owner, or with the Petitions Review Committee.



(2) For any petition to be admissible, it must specify a fact or a breach of this Public Contracts Code and the contract award regulations or the relevant biddingfile.

(3) Petitions may befiled:

- during the prequalificationphase;
- between the publication of the tender notice and the opening ofbids;
- at the bid openingphase;
- at the end of the technical bid evaluation phase where bid opening comprises two phases;
- between the publication of results and the notification of the contract.

ARTICLE 171: (1) During the prequalification phase, the petition may bear on requests for review of bidding conditions and prequalification or for review of the decisions or deeds of the Project Owner or the Delegated Project Owner during the prequalification procedure.

(2) Candidates shall have five (5) working days prior to the date of submission of applications and five (5) working days after the publication of prequalification resultsto file their petitions with the Project Owner or the Delegated Project Owner, with copy to the Authority in charge of public contracts and the public contracts regulatory body.

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

- (a) the petition should be sent to the Project Owner or the Delegated Project Owner, with copy to the Authority in charge of public contracts and the public contracts regulatory body;
- (b) it should reach the Project Owner or the Delegated Project Owner no later than 14 (fourteen) working days before the bid opening date;
- (c) the Project Owner or the Delegated Project Owner shall have 5 (five) working days to respond. A copy of the response shall be forwarded to the Authority in charge of public contracts and the public contracts regulatory body;
- (d) in case of disagreement between the petitioner and the Project Owner or the Delegated Project Owner, the petitioner shall refer the petition to the Petitions Review Committee.
- (e) the petition shall not be suspensive.

(2) At this stage, the petition may be aron:



- (a) compliance of bidding documents with regulations;
- (b) the technical specifications adopted;
- (c) evaluation criteria;
- (d) conditions for publishing notices;
- (e) rules on the participation of candidates and the required capacity and guarantees;
- (f) the contract award method and selection procedure adopted.

ARTICLE 173: (1) During the opening of bids, the petition shall relate only to the implementation of this stage, especially compliance with procedures and the regularity of the verified documents.

- (2) The petition shall be sent to the Petitions Review Committee with copy to the Project Owner or the Delegated Project Owner, the chairperson of the relevant tenders board, the public contracts regulatory body and the Authority in charge of public contracts.
- (3) It shall be filed within three (3) working days prior to the tender opening date.
- (4) The petition shall not be suspensive.

ARTICLE 174: (1) At the end of the technical bid evaluation phase, where bid opening comprises two (2) stages, the Project Owner shall be required to inform bidders of the technical bid evaluation results prior to the opening of the financial bids.

- (2) At the end of technical bid evaluation, unsuccessful bidders may file a petition with the Petitions Review Committee with copy to the Project Owner or the Delegated Project Owner, the chairperson of the relevant tenders board, and the Authority in charge of public contracts.
- (3) The petition shall be filed within 3 (three) working days after the financial bid opening session.

ARTICLE 175: (1) Between the publication of results and the notification of contract award, petitions may bear only on the award.

- (2) The petition shall be sent to the Petitions Review Committee with copy to the Project Owner or the Delegated Project Owner, the chairperson of the relevant tenders board, the public contracts regulatory body and the Authority in charge of public contracts.
- (3) It shall be filed within 5 (five) working days after the publication of results.
- (4) The petition may lead to the suspension of the procedure, subject to the opinion of the public contracts regulatory body.



- (5) The Authority in charge of public contracts shall lift suspension of the procedure after reviewing the findings of the Petitions Review Committee.
- (6) Except in the event of petition, contract award shall be notified within 15 (fifteen) calendar days after the publication of results.

ARTICLE 176: (1) For the petitions referred to in Articles 173, 174, 175 and 176 of this code, the Petitions Review Committee shall seek the opinion of the public contracts regulatory body which shall examine the petition and submit its findings to the Petitions Review Committee within 7 (seven) calendar days from the time of referral.

- (2) After validating the findings of the public contracts regulatory body, the Petitions Review Committee shall propose appropriate sanctions to the Authority in charge of public contracts.
- (3) The decision of the Authority in charge of public contracts shall be binding on both parties.

ARTICLE 177: (1) After the publication of bid evaluation results, each bidder shall be sent an excerpt of the bid evaluation report concerning him upon request addressed to the Project Owner or the Delegated Project Owner.

- (2) Under pain of foreclosure, petitions must be filed within the deadlines provided for in Articles 172, 173, 174, 175 and 176 of this code.
- (3) The review of petitions may lead to the resumption or discontinuance of the procedure.

SUB-SECTION II

DISAGREEMENTS BETWEEN THE TENDERS BOARD AND THE PROJECTOWNER OR DELEGATED PROJECT OWNER

ARTICLE 178: (1) Where the Project Owner or the Delegated Project Owner disagrees with a proposal made by the tenders board, he shall be bound to request another review of the file and state his reservations within 3 (three) working days from the date of receipt of the proposal made by the relevant tenders board.

- (2) The chairperson of the tenders board shall communicate the findings of the new review to the relevant Project Owner.
- (3) Where the disagreement persists, the Project Owner or the Delegated Project Owner shall refer the matter to the Authority in charge of public contracts.
- (4) The Authority in charge of public contracts may seek the opinion of the public contracts regulatory body which shall, in this case, respond within 7 (seven) days.



- (5) Notification of the contract 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 THE DELEGATED PROJECT OWNER

ARTICLE 179: (1) In the event 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 fresh review of the file by the Central Contracts Control Board and state his reservations within 7 (seven) working days of receipt of the notification of the findings of the deliberations of the relevant Central Contracts Control Board.

- (2) The chairperson of the Central Contracts Control Board shall notify the Project Owner or the Delegated Project Owner of the findings of such deliberations.
- (3) Where the disagreement persists, the Project Owner or the Delegated Project Owner shall notify his final decision to the Central Contracts Control Board within 5 (five) calendar days from receipt of notification of the final opinion of the Central Contracts Control Board.
- (4) After this period, the chairperson of the Central Contracts Control Board shall forward the file to the Authority in charge of public contracts.
- (5) The Authority in charge of public contracts may request the opinion of the public contracts regulatory body which shall, in this case, respond within 7 (seven) days.
- (6) The decision of the Authority in charge of public contracts shall be binding on both parties.

SECTION II

LITIGATIONS DURING THE EXECUTION PHASE

SUB-SECTION I

TERMINATION

Paragraph 1

Termination Pre-requisites

ARTICLE 180: (1) Where the Administration's contracting partner does not comply with the contract provisions or related service orders, as appropriate, the Project Owner or the Delegated Project Owner shall issue a formal notice requiring him to comply within a specified period.



- (2) Such period may not be less than 21 (twenty-one) calendar days, except otherwise stated for in the Special Administrative Clauses.
- (3) The application of the provisions of (1) and (2) above shall have no incidence on any delay penalties.

ARTICLE 181: (1) Where the Administration's contracting partner fails to comply with the provisions of Article 180 of this code, the Project Owner may:

- (a) prescribe full or partial State supervision at the expense and risk of the said Administration's contracting partner;
 - (b) or terminate the contract against and at the cost and risk of the Administration's contracting partner.
- (2) The terms and conditions for terminating public contracts and the effects there of shall be laid down in the General Administrative Clauses, subject to the provisions of Articles 185, 186 and 187 of this code.

Paragraph 2 Grounds for Termination

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

- (a) death of the allottee. In this case, the Project Owner may, where applicable, authorize that the proposals made by the rightful claimants to continue service provision be accepted;
- (b) bankruptcy of the allottee. In this case, the Project Owner may, where applicable, accept proposals that could be made by creditors to continue service provision;
- (c) judicial liquidation, if the Administration's contracting partner is not authorized by the court to continue operating his business;
- (d) in case of sub-contracting, co-contracting or subsidiary orders, without the prior authorization of the Project Owner or the Delegated Project Owner;
- (e) default by the Administration's contracting partner duly established and notified by the Project Owner or the Delegated Project Owner;
- (f) failure to comply with labour laws and regulations;
- (g) significant price variation under the conditions laid down by the General Administrative Clauses, due to changes in economic conditions or in the initial quantities of the contract;
- (h) duly established fraudulent and corrupt practices.



Article 183: Notwithstanding the provisions of Article 182 of this code, the Project Owner or the Delegated Project Owner may, in case of force majeure and after obtaining the opinion of the Authority in charge of public contracts, terminate a contract without the Administration's contracting partner being liable, and without prejudice to damages that he may claim.

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) and (h) of this code, may not, except by special waiver by the Authority in charge of public contracts, tender before a period of 2 (two) years from the date of notification of the termination.

In case of default in service provision, such ban shall apply without prejudice to payment by the Administration of services already provided.

- (2) Where the ban referred to in (1) above concerns a natural person or a sole proprietorship, it shall equally apply to any other undertaking subsequently established during the said period by the defaulter or, in case of a sole proprietorship, by the manager.

For limited liability companies, this provision shall apply to the manager.

- (3) The Project Owner or the Delegated Project Owner shall be bound to forward termination documents to the public contracts regulatory body in order to update the files of those penalized.

ARTICLE 185: Any termination decided in accordance with the provisions of Article 182 shall not imply the application of the provisions of Article 184 of this code.

SUB-SECTION II CO-CONTRACTORS' COMPLAINTS

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

- (2) The Authority in charge of public contracts shall decide based on the proposal of the Petitions Review Committee and after the prior opinion of the public contracts regulatory body.



SUB-SECTION III AMICABLE SETTLEMENT OF DISPUTES

ARTICLE 187: (1) Disputes resulting from public contracts may, where necessary, be settled amicably.

(2) Where the amicable settlement provided for in (1) above is unsuccessful, it shall have no incidence on the ordinary law settlement procedure, except by a waiver resulting from loan agreements or conventions, or other international conventions.

CHAPTER II PENALTIES

ARTICLE 188: (1) Any procedure followed in violation of the provisions of this code, as well as perpetrators of malpractices in the award and execution of public contracts shall be liable to the penalties provided for by the laws and regulations in force.

(2) Where such cases of violation concern misappropriation of public funds, the perpetrators shall be liable to the penalties provided for by Section 184 of the Penal Code.

SECTION I PROCEDURAL REGULATIONS

ARTICLE 189: (1) Based on the public contracts documentation submitted to it, the public contracts regulatory body shall take regulatory decisions and contact the persons concerned within prescribed deadlines, for the following measures:

- (a) corrigenda to tender and contract award notices;
- (b) compliance with procedures and prescribed deadlines;
- (c) observance of the jurisdictional thresholds of tenders boards;
- (d) prevention of the splitting of public contracts;
- (e) transmission of public contract documents;
- (f) consideration of the technical opinion of public contracts award and supervisory bodies;
- (g) use of standard public contract documents;
- (h) fielding of independent observer missions,



- (i) adoption of precautionary measures, in case of alleged irregular procedures, pending the completion of necessary investigations and the decision of the Authority in charge of public contracts.
- (2) The regulatory decisions referred to in (1) above should be taken into account by those concerned.

ARTICLE 190: The Authority in charge of public contracts may cancel any public contract awarded in violation of regulations or the rules of good governance.

SECTION II PENALTIES APPLICABLE TO PUBLIC CONTRACTS SECTOR ACTORS

SUB-SECTION I PENALTIES APPLICABLE TO PRIVATE SECTOR ACTORS

ARTICLE 191: (1) Without prejudice to the penalties provided for by other control bodies, the Administration's contracting partner shall be liable to the penalties listed in (2) below, on the decision of the Authority in charge of public contracts and after consulting the public contracts regulatory body, as applicable.

- (2) The following penalties may be imposed and, concurrently, as the case may be:
 - (a) confiscation of guarantees provided by the offender in the case of challenged bidding procedures;
 - (b) debarment from public procurement for a specific duration depending on the gravity of the offence committed;
 - (c) withdrawal of their grading certificate.
- (3) Pursuant to the provisions of Article 185 of this code, debarment from public procurement may not exceed 2 (two) years. In case of further breach of public contracts regulations by the same natural or corporate body, the competent courts may declare permanent debarment.
- (4) The public contracts regulatory body shall periodically draw up a list of natural persons or corporate bodies debarred from participating in public procurement. The list shall be updated regularly and published in the Public Contracts Logbook of the public contracts regulatory body.



ARTICLE 192: Any contracting partner of the Administration found guilty of violating hygiene, health, safety and environmental protection measures shall be liable to the penalties provided for by the laws and regulations in force, without prejudice to termination, banning from bidding and/or deduction on payments imposed after a formal notice.

ARTICLE 193: The Authority in charge of public procurements may, as a precautionary measure, take a decision to ban any bidder or the Administration's contracting partner from bidding for a period not exceeding 2 (two) years for influence peddling, conflict of interest, insider trading, complicity, fraud, corruption or production of fraudulent documents in his bid, without prejudice to the criminal proceedings that could be initiated against him.

SUB-SECTION II PENALTIES APPLICABLE TO PUBLIC SECTOR ACTORS

ARTICLE 194: The Authority in charge of public contracts may take a decision banning public sector actors found guilty of violating the provisions of this code from participating in public contracts award and execution monitoring for a period not exceeding 2 (two) years.

ARTICLE 195: (1) Tenders board and bid evaluation sub-committee chairpersons, members, secretaries and experts, as well as independent observers and contracts control committee chairpersons and members shall be bound by professional secrecy.

(2) In the event of established failure in the discharge of their duties, they may be excluded from the public contract system for a period not exceeding 2 (two) years, without prejudice to the penalties provided for by the laws and regulations in force.

SECTION III ETHICAL PRINCIPLES

SUB-SECTION I COMMON PROVISIONS

ARTICLE 196: Public sector employees, bidders and contract holders, as well as any other person involved in whatever capacity in the public contracts award, execution and regulation chain shall be subject to the provisions of the laws and regulations forbidding corruption, fraudulent schemes, collusive, coercive or obstructive practices, conflicts of interest, insider trading, and complicity.



SUB-SECTION II CORRUPTION AND FRAUDULENT SCHEMES

ARTICLE 197: (1) Whoever offers, gives, solicits or accepts any form of benefit in order to influence the action of a public employee during the award or execution of a contract shall be guilty of "corruption".

- (2) Whoever deforms or distorts facts in order to influence the award or execution of public contracts shall be indulging in "fraudulentschemes".
- (3) Two or more bidders who connive to artificially keep bid prices at a level not commensurate with those that would result from competition shall be guilty of 'collusive practices'.
- (4) Whoever harms persons or damages their property or makes threats against them, directly or indirectly, in order to influence their actions during the award or execution of a contract shall be indulging in 'coercive practices'.
- (5) Whoever commits acts aimed at destroying, falsifying, altering or concealing evidence on which an investigation is based or any misrepresentation made to investigators, or any threat, harassment, or intimidation against a person for purposes of preventing him from revealing information relating to an investigation or the continuation there of, shall be indulging in "obstructive practices".

SUB-SECTION III INSIDER TRADING AND CONFLICTS OF INTEREST

ARTICLE 198: (1) Consultants who participated in preparing a tender file shall not take part in the tender.

- (2) No public industrial or commercial institution under the supervisory authority of a contracting authority shall be allowed to submit a bid under a tender launched by the latter.
- (3) During his mandate, an Independent Observer may not supply goods, works or services to the government service for which he works.

ARTICLE 199: (1) Conflict of interest shall mean any situation wherein the contract holder or the supervisor of public contracts award and/or execution procedures may derive direct or indirect benefits from a contract concluded by the Project Owner or the Delegated Project Owner, any transfer or any situation in which he has enough personal interests to compromise his impartiality in the discharge of his duties or which may adversely affect his judgement.

- (2) Tenders board and bid evaluation sub-committee chairpersons, members, secretaries and experts, as well as contract officials shall be bound by obligation of reserve and discretion.



They shall refrain from any action that may compromise their objectivity and, in any case, not have any financial, personal or any other interest linked to the contract under review.

- (3) In case of conflict of interest, tenders board, contracts control committee and bid evaluation sub-committee chairpersons, experts and members, as well as independent observers shall in form the Project Owner or the Tenders Board Chairperson in writing, and copy the public contracts regulatory body, under pain of penalties provided for by the regulations in force. In this case, they shall be replaced for the contracts concerned.
- (4) At the execution stage, the contract holder shall, in writing, report the conflict of interest to the Project Owner. In this case, he shall be bound to propose a replacement solution to the Project Owner.

SUB-SECTION III COMPLICITY

ARTICLE 200: (1) Any supervisor of contract award or execution procedures shall be held liable in the event of complicity.

- (2) Within the meaning of this Public Contracts Code complicity shall be:
 - (a) the omission or negligence to carry out controls or to give the prescribed technical opinion;
 - (b) intentional omission to inform the Project Owner or the competent authority of irregularities noted in the discharge of his duties.
- (3) Liability may also be incurred in the following cases:
 - (a) any statement or confirmation of false information on the situation of the government service or the public or semi-public body entrusted with monitoring, evaluation or supervision;
 - (b) receiving benefits that are undue or likely to undermine the independence of the credit vote supervisor;
 - (c) transactions with the entity entrusted with supervision, in violation of legal or the regulatory incompatibilities in force.



PART VI INCOMPATIBILITIES AND SUBSTITUTION

CHAPTER I INCOMPATIBILITIES

Article 201: (1) No one may chair more than one tenders board or central contracts control board.

- (2) No one may be member of more than 2 (two) tender boards or 2 (two) central contracts control boards.
- (3) No one may be secretary of more than one tenders board or central contracts control board.
- (4) No member or secretary of a tenders board or central contracts control board may be part of a bid evaluation sub-committee.
- (5) No one may be expert in both a bid evaluation sub-committee and a central contracts control board for the same file.
- (6) No one may concurrently be member of a petitions review committee or tenders board, or a central contracts control board, or a bid evaluation sub-committee.

ARTICLE 202: The status of employee of the public contracts regulatory body shall be incompatible with that of chairperson, member or secretary of a tenders board, with the exception of the tenders board of such body.

CHAPTER II SUBSTITUTION

ARTICLE 203: (1) With the exception of the award, signing and termination of the contract, the Project Owner or the Delegated Project Owner may delegate signature or certain powers to his collaborators, in the forms and under the terms and conditions provided for by the regulations in force.

- (2) A copy of the delegation instrument shall be forwarded to the Authority in charge of public contracts, the public contracts regulatory body, the tenders board, the Central Contracts Control Board and all the other authorities for consideration.



ARTICLE 204: (1) Where the chairperson of a tenders board or of a central contracts control board is unavailable for part of the tenders board session, he shall designate a board member to chair deliberations.

- (2) Where the chairperson of a tenders board or of a central contracts control board is absent for a period not exceeding 30 (thirty) calendar days, he shall designate a board member to chair deliberations and inform the Authority in charge of public contracts for approval.
- (3) A copy of the delegation instrument shall be forwarded to the Project Owner or the Delegated Project Owner, to the Regional Governor or the Sub-Divisional Officer, as appropriate.
- (4) Where the chairperson of a tenders board or of a central contracts control board is absent for a period of more than 30 (thirty) calendar days, he shall inform the authority in charge of public contracts who shall appoint an acting chair person.
- (5) The ad hoc or acting chair person shall enjoy the full powers provided for by the instruments in force.

ARTICLE 205: (1) Where the temporary impediment of a tenders board or central contracts control board member is duly established, the supervisory authority shall appoint an acting member by a letter addressed to the chair person of the said tenders board.

- (2) In case of temporary impediment of the secretary of a tenders board or a central contracts control board, the Project Owner, the Delegated Project Owner, the Governor or the Divisional Officer, as appropriate, shall appoint an ad hoc secretary.
- (3) The acting member or secretary's term shall automatically end upon the return of the incumbent.

PART VII MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 206: (1) On going consultations shall be governed by procedures applicable at the time of their launching.

(2) Contracts under execution shall, where applicable, be amended to comply with the provisions of this decree.

ARTICLE 207: All provisions prior to this decree and instituting the Public Contracts Code, and relating to the setting up, duties, organization and functioning of tenders boards, notably:



- Decree No. 2004/275 of 24 September 2004 to institute the Public Contracts Code;
- Decree No. 2012/74 of 8 March 2012 relating to the setting up, organization and functioning of public tenders boards;
- Decree No. 2013/271 of 5 August 2013 to amend and supplement certain provisions of Decree No. 2012/74 of 8 March;
- provisions repugnant to Decree No. 2012/75 of 8 March 2012 to organize the Ministry of Public Works;

are hereby repealed.

ARTICLE 208: This decree shall be registered, published according the procedure of urgency and inserted in the Official Gazette in English and French.

Yaoundé, le 20 JUIN 2018

LE PRÉSIDENT DE LA REPUBLIQUE,



PRESIDENCE DE LA REPUBLIQUE
PRESIDENCY OF THE REPUBLIC
SECRETARIAT GENERAL
SERVICE DU FICHIER LEGISLATIF ET REGLEMENTAIRE
LEGISLATIVE AND STATUTORY AFFAIRS SUBSIDIARY SERVICE
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