

DECREE-LAW No. 22/2022 of May 11
LEGAL REGIME OF PROVISIONING, PUBLIC CONTRACTS AND
RESPECTIVE INFRACTIONS

Contract with the State and the services including the entities of the Public Administrative Sector, it is necessary to establish legal standards that can regulate the provisioning procedure and public procurement carried out by the entities in the state.

The current legal regime of provisioning and public contracting was approved more than 15 years ago, and has proven to be insufficient to meet the new challenges of a modern and transparent Public Administration.

Taking into account the weight of public expenditure in the national economy and, in particular, that which results from provisioning procedures, it is essential to approve a new legal regime, clearer, simple, objective, rigorous and transparent, to promote the economic and social development of the Country.

The legal regime that is now approved concentrates the legal regimes of provisioning, of public contracts and infractions in a single diploma, but preserves the general lines of the current regime, even though adapting it to the new realities and the best practices, allowing an easy adaptation and taking advantage of the experience and know-how acquired by the Public Administration in the last 15 years.

The new regime simplifies the provisioning procedure, namely through the reduction of the existing types of provisioning, and presents a detailed description of each phase, for a better conduct of procedures. The planning process is strengthened, with a view to ensuring greater transparency, stability and predictability for the Public Administration and the private sector and to improve the relationship between provisioning and budget execution. The attributions of the National Provisioning Commission are increased, namely in relation to the standardization of procedures and the issuing of recommendations, the drafting of models and forms, as well as the instruction of administrative offence processes. Finally, electronic contracting is adopted, of generalized use at an international level, which will be a driving instrument for efficiency, transparency and free competition.

Thus, pursuant to Article 115(1)(e) and Article 116(d) of the Constitution of the Republic, the Government decrees the following to be valid as law:

TITLE I
INITIAL PROVISIONS

CHAPTER I
SUBJECT MATTER AND SCOPE

Article 1
Object

The present document approves the legal regime of the provisioning, of the public contracts and respective infractions.

Article 2
Scope of application

1. The present document applies to the provisioning procedures performed by the collective people subject to it for the celebration of acquisition or rental contracts of goods, provision of services and the execution of works, without jeopardy of the provisions in the following article.
2. For the purposes of the present diploma, the following definitions shall apply:
 - a) "Contract for the acquisition or leasing of goods" shall mean an agreement, for consideration, which has as its object the purchase, leasing or financial lease, with or without an option to purchase, of movable property, and may relate to goods to be manufactured or adapted and include works of placement, installation and maintenance of goods;
 - b) "Works execution contract" means an agreement, for consideration, having as its object the performance of works relating to construction, repair, maintenance or building or any other professional activity of architecture or engineering, installation, decoration, finishing or others of a similar nature, which may include the supply of material resources required by the characteristics of the work
 - c) "Service contract" means an agreement, for consideration, having as its object the provision of services, namely professional services, of design, development, consultancy or result, which may include, as an incidental matter, other components, namely the supply of material resources or the execution of small works, required by the characteristics of the service to be provided.
3. The present document applies to the services and entities of the Public Administrative Sector, namely:
 - a) The State, represented by the organs, services and funds of the Direct Administration;
 - b) The collective persons created as support services to the performance of the holders of sovereign organs;
 - c) The legal persons of Indirect Administration;
 - d) The services and entities of Social Security;
 - e) The Special Administrative Region of Oe-Cusse Ambeno and the respective services and entities
 - f) The municipalities;
 - g) Services and entities of the Independent Administration, with the exception of the Central Bank of Timor-Leste.
4. The present law shall also apply to public legal persons in the form of a company, association or foundation, whenever expressly provided for in the legislative act that proceeds to their creation.

Article 3
Excluded contracts

1. This Regulation does not apply to the following contracts:
 - a) Employment contracts for the exercise of public functions, regardless of their regime;
 - b) Contracts awarded between contracting authorities;
 - c) Intergovernmental contracts or inter-organic administrative contracts;
 - d) Contracts between a contracting authority and another entity carrying out the essential part of its activities for the benefit of that contracting authority, over which the contracting authority exercises contracts between a contracting authority and another entity carrying out the essential part of its activities for the benefit of that contracting authority over which the contracting authority exercises, alone or jointly with others, a control which is similar to that which it exercises over its own departments;
 - e) Contracts whose object is the attribution of subsidies, subventions or scholarships;
 - f) Company contracts;
 - g) Special investment agreements;
 - h) Agreements concluded with third States, governmental organisations of third States, international organisations and international financial institutions.
2. The present diploma is not equally applicable to the following contracts, which follow special regimes of provisioning and contracting:
 - a) Contracts related to material of a military nature or for use by the armed forces, the police forces and the intelligence services, when its disclosure compromises the interests of national security of the Democratic Republic of Timor-Leste;
 - b) Contracts that, under the terms of the law, are declared secret or whose execution must be accompanied by special security measures;
 - c) Contracts intended to satisfy the needs of peripheral services or delegations of adjudicating entities located outside the national territory;
 - d) (d) contracts resulting from agreements with third countries, governmental organisations of third countries, international organisations and international financial institutions, where those contracts provide for exclusion from these arrangements;
 - e) Public service concession contracts;

- f) Contracts for the issue, purchase, sale, transfer or management of securities or any type of financial instruments;
- g) Contracts for the management of treasury or deposits;
- h) Contracts and other instruments of legal regulation whose formation is especially regulated within the scope of the legal regime of public-private partnerships;
- i) Contracts of purchase and sale, donation, exchange and lease of real estate or similar contracts;
- j) Contracts for the execution of works implemented under the terms of the Municipal Integrated Development Planning (PDIM);
- k) Other contracts that are expressly regulated by special law.

CHAPTER II PRINCIPLES OF PROCUREMENT AND CONTRACTING

Article 4 Principle of legality

1. The provisioning and contracting by the services and entities of the Public Administrative Sector must observe the foreseen norms in the present document and in the applicable regulations, as well as the general principles and other legislation applicable to the administrative activity.
2. The principles, as well as the contracting rules foreseen in the present document, are applied with a subsidiary character to the special provisioning and contracting regimes.

Article 5 Principle of the pursuit of the public interest

In the provisioning and contracting, the services and entities of the Public Administrative Sector must pursue the maximum satisfaction of the public interest, with respect for the rights and interests legally protected of the private subjects.

Article 6 Transparency and publicity principles

1. In the provisioning and contracting, the services and entities of the Public Administrative Sector act in a transparent manner and ensure the publicity of all the necessary information to comply with the law.

2. Without damage of the provisions in the previous number, the confidentiality of the documents and information that are classified as confidential by the private subjects, that are covered by intellectual property or commercial secret or that are subject to any other legal regime of secret or secrecy must be guaranteed.

Article 7
Principles of truth and good faith

1. In the provisioning and contracting, all subjects must act in a truthful and good faith manner, as well as fully and timely comply with their obligations.
2. All subjects are bound to the duty of mutual collaboration, namely in what concerns the exchange of information and documentation and the diligence in the fulfillment of their obligations with the intent of ensuring the provisioning and contracting in accordance with the law and in the agreed upon terms.

Article 8
Principle of impartiality

In the provisioning and contracting, the services and entities of the Public Administrative Sector and all of its representatives must act in an exempt and impartial manner in relation to all subjects.

Article 9
Principle of the promotion of the national economy

In the provisioning and contracting, the services and entities of the Public Administrative Sector must contribute to the promotion of the development of the national economy, privileging national goods and services, whenever expressly allowed by the present document.

Article 10
Principle of competition

In the provisioning and contracting, the services and entities of the Public Administrative Sector must privilege the competition, without damage to the limitations foreseen in the law.

Article 11
Principles of stability and trust

1. The rules and the relevant documents that serve as a base for the provisioning and contracting must remain unchanged during the entire procedure, except in the situations where the law allows its alteration, according to the public interest.
2. In the provisioning procedures where no negotiation is foreseen, the proposals presented by the competitors are unalterable until the respective adjudication, except as a result of arithmetic corrections.

3. After the adjudication, the parties can introduce, by mutual agreement, adjustments of an accessory or functional character, as long as the principle of pursuing the public interest is observed.

Article 12
Principle of unity

The services and entities of the Public Administrative Sector must guarantee the coherence, unity and interoperability of the respective provisioning and contracting acts and documents.

Article 13
Principle of responsibility

The subjects intervenient in the provisioning and contracting, as well as their representatives, are civil, financially, disciplinarily and criminally responsible for the acts and omissions they practice, under the terms of the provisions in the present document and in other applicable legislation.

Article 14
Principle of electronic processing

The services and entities of the Public Administrative Sector must use electronic means of provisioning and contracting in order to promote the administrative efficiency and transparency.

CHAPTER III
GENERAL RULES

Article 15
Publicity

1. The provisioning procedures and contracts will be obligatorily published in the Provisioning Portal, in both official languages.
2. The Provisioning Portal is the electronic page destined to the dissemination of the mandatory and optional information about the provisioning procedures and contracts.
3. The provisioning procedures by tender must also be published in, at least, one newspaper with national circulation, in both official languages.
4. The provisioning procedures by tendering with a value equal or superior to USD 1.000.000 must also be publicized in at least two electronic platforms internationally used for this effect, in any of the official or working languages.

5. The celebrated contracts must be the object of a publicity that indicates, at least, the parties, the object, the value and the period of validity.

Article 16

Deadlines

1. The acts relative to provisioning procedures and contracts are subject to the deadlines defined in the law.
2. The count of the deadlines foreseen in the present document is suspended on Saturdays, Sundays and holidays, without jeopardy of what is established in the following number.
3. In the contract execution phase, the deadlines are continuous, not being suspended on Saturdays, Sundays and holidays, with the exception of deadlines relative to administrative and judicial guarantees and to the administrative infraction process, which follow the rules established in the previous number.
4. The day on which the event from which the time limit begins to run is not included in the calculation.
5. A time limit expressed in weeks, months or years, running from a certain date, shall expire at midnight on the day corresponding to it, within that last week, month or year, but where, in the last month, there is no corresponding day, the time limit shall expire on the last day of that month.
6. Where the last day of the time limit falls on a day on which the service before which the act must be done is not open to the public or does not operate during the normal period of time, the time limit shall be transferred to the immediately following working day.

Article 17

Language

1. All documents and communications related to the provisioning procedures and the contracts must be written in one of the official languages, without damage of the presentation of original documents written in foreign languages, which must be accompanied by the respective translation into one of the official languages, without damage of the exceptions foreseen in the present document.
2. Whenever necessary, the communications and the documents that are part of the provisioning procedure can be translated into the working languages, prevailing, in case of divergence, the redaction in one of the official languages.
3. Depending on the complexity or specificity of the provisioning object, the pieces of the procedure can foresee the possibility of presenting the documents that

accompany the proposal in a foreign language, without translation, indicating the admitted languages.

Article 18 Communications

1. The necessary data for the realization of official communications, namely the people and services or entities and their contacts, addresses and electronic addresses must be expressly identified in the first communication or in the first document published within the scope of the provisioning procedures and contracts.
2. The communications are considered done:
 - a) On the date of signature of the document acknowledgement of receipt, by the identified representative or official; or
 - b) On the date of its dispatch, when the same is sent by electronic mail or other means of electronic data transmission, with time certification of the expedition or by acknowledgement of receipt by the addressee.

Article 19 Archive

1. The services and entities of the Public Administrative Sector register all the communications, acts and any other documents relative to the provisioning and contracting.
2. All provisioning and contracting procedures must constitute a process with a single internal record and be organized chronologically, duly paginated and signed by the competent organs and employees of the adjudicating entities and the intervening public contracting parties.
3. The archive must allow keeping evidence of all communications, acts and documents relative to the provisioning and contracting, safeguard the documentation and enable its consultation by the different subjects of the provisioning and contracting, as well as by the inspection, control and audit services of the Public Administrative Sector and by the judicial authorities.
4. The archive and registry system are maintained, in physical and digital support, by the services and entities of the Public Administrative Sector for a minimum period of ten years counting from the date of registration.

TITLE II
SUBJECTS OF THE PROVISIONING AND CONTRACTING

CHAPTER I
SUBJECTS IN GENERAL

Article 20
Types of subjects

1. The subjects of the provisioning and contracting are divided into public and private.
2. They are public subjects of the provisioning and contracting:
 - a) The "adjudicating entity", which is the public collective entity that wants to be a party in a contract and in favor of which the corresponding provisioning procedure is opened;
 - b) The "National Provisioning Commission", which is the public service specialized in the instruction of provisioning procedures;
 - c) The "provisioning service", which is the organic unit of the adjudicating entity responsible for the instruction of provisioning procedures;
 - d) The "public contractor", which is the adjudicating entity that celebrates a contract.
3. They are private subjects of the provisioning and contractation:
 - a) The "adjudicator", which is the individual or collective person or grouping selected to celebrate the contract following the provisioning procedure;
 - b) The "candidate", which is the individual or collective person or grouping that participates in the qualification phase of a bid, through the presentation of a candidacy;
 - c) The "competitor", which is the individual or collective person or grouping that participates in the provisioning procedure by presenting a proposal;
 - d) The "private contractor", which is the adjudicator that celebrates a contract
 - e) The "invited", which is the individual or collective person or grouping invited to present a proposal within the provisioning procedure;
 - f) The "interested party", which is the individual or collective person or grouping that demonstrates interest in participating in any provisioning, through, namely, the consultation of the parts of the provisioning procedure, the participation in the previous conference or the registration in the database of interested parties.
4. For the effects of the previous number, "grouping" has the meaning given to it in articles 27 and 28.

CHAPTER II PUBLIC AUTHORITIES

Article 21 Contracting entities

1. Contracting entities are the public legal persons listed in Article 2 (3) and (4).
2. The adjudicating entities can group themselves for the realization of provisioning procedures and the celebration of contracts of interest to all of them or for the realization of provisioning procedures with the intent of celebrating separate contracts whose provisioning together results in benefit to the public interest.
3. The adjudicating entities must designate which one of them constitutes the representative of the grouping for the effects of preparation and instruction of the provisioning procedure and, when applicable, of the contracting.
4. The decision for the opening of the provisioning procedure and the adjudication decision, as well as any other decision that falls under the adjudicating entity or the public contractor, must be taken jointly or in a combined manner by the competent organs of all adjudicating entities that are part of the group, eventually through a procedural conference.

Article 22 Powers

1. The following are competent for the decision to open the provisioning procedure and for the adjudication decision, as well as for any other decision that falls on the adjudicating entity or the public contractor:
 - a) In the procedures with a value superior to USD 500.000, the organs of direction of the services and entities of the Public Administrative Sector with extended financial autonomy;
 - b) In the procedures with a value equal or inferior to USD 500.000, the top director of the organic unit responsible for the provisioning and contracting of the services and entities of the Public Administrative Sector with extended financial autonomy.
2. In companies, associations and public foundations, the competencies foreseen in the previous number are up to the respective management organs, when applicable.
3. The competencies referred to in the previous numbers may be delegated, with or without sub-delegation powers.

Article 23
Provisioning service

1. The services and entities of the Public Administrative Sector must integrate an organic unit responsible for the preparation and instruction of provisioning procedures.
2. It is duty of the provisioning service:
 - a) Prepare the provisioning project to be submitted to the decision of the opening of the provisioning procedure;
 - b) Instruct the provisioning procedures that should not be instructed by the National Provisioning Commission.

Article 24
The National Provisioning Commission

1. The National Provisioning Commission is the public service specialized in the instruction of provisioning procedures.
2. It is the duty of the National Provisioning Commission to:
 - a) Instruction the provisioning procedures of a value equal or superior to USD 1.000.000;
 - b) Instruction the provisioning procedures of a value inferior to USD 1.000.000, when requested by the adjudicating entity;
 - c) Provide support in the realization of provisioning procedures with a value inferior to US\$ 1.000.000, when requested by the adjudicating entity;
 - d) Issue opinions and recommendations and elaborate models and forms with the intent of standardizing the procedures;
 - e) Create and maintain databases of interested parties, candidates, competitors, adjudicators and private contracting parties which register their qualifications and skills, as well as the fines and accessory sanctions applied under the administrative offence regime foreseen in the present diploma;
 - f) Promote the training of human resources in the provisioning area;
 - g) Instruction of the processes within the scope of the administrative offender regime foreseen in the present document;
 - h) Perform any other tasks that are attributed to it by law.
3. Paragraph a) of the previous number is not applicable to the Presidency of the Republic, the National Parliament, the Special Administrative Region of Oe-Cusse Ambeno and respective services and entities and the municipalities, which can, however, make use of

the faculties foreseen in paragraphs b) and c) of the same number without value limitation.

4. In the provisioning procedures that are so instituted, the National Provisioning Commission performs all the material acts foreseen in the present document that belong to the adjudicating entity.

Article 25 **Procedural conference**

1. The competent organs may exercise the competencies foreseen in the present statute jointly or jointly in a deliberative and coordinating procedural conference.
2. The services or entities may perform the material acts foreseen in the present statute in a common or conjugated manner, in an executive procedural conference.
3. The formation of any of the procedural conference modalities provided for in the present article shall be requested by any of the competent organs and decided upon by unanimity of the competent administrative organs or by decision of the Prime Minister.

Article 26 **Conduct of Public Bodies**

1. The holders of the competent organs and the representatives and employees of the awarding entities and the public contracting entities, as well as the members of the jury must
 - a) Exercise their functions in an exempt and impartial manner;
 - b) Act in the public interest and in accordance with the objectives, principles and norms established by law;
 - c) To abstain from practicing, participating in or supporting fraudulent acts or acts that constitute a crime;
 - d) Avoid, in the performance of their functions, all situations of potential conflict of personal interests;
 - e) Maintain secrecy and reserve the information of which they become aware within the scope of their functions;
 - f) Comply with and enforce the laws, regulations and rules of conduct applicable to public servants and agents;
 - g) Observe and enforce the impediments and incompatibilities regimes in force, in accordance with the law.

2. Any of the people referred to in the previous article that has patrimonial, financial, benefit or advantage interest, by himself or by an intermediary person, in the realization of a provisioning procedure and or the celebration and execution of a contract must make the situation known to the competent organ and abstain, in any way, from participating in this provisioning or contract.
3. The people referred to in No. 1 are prevented from soliciting or receiving, directly or indirectly, any payment, consideration, offer or advantage to influence an action, decision or deliberation of the jury or competent organs.
4. Public entities may not be represented or in any way advised by the following persons:
 - a) Natural persons who have a family relationship or affinity in a direct line or up to the 4th degree of collateral line with any of the candidates, invitees, tenderers, contractors or private contractors;
 - b) Natural or collective people that maintain professional or commercial relationships with any of the candidates, invitees, competitors, adjudicators or private contractors or have had professional or commercial relationships with them in the last three years counted from the bid opening date.
5. The persons referred to in paragraph 1 must report all situations of infraction of which they become aware.

CHAPTER III PRIVATE SUBJECTS

Article 27 Private subjects

Any natural or collective person or grouping can be interested, candidate, invited or competitor in a provisioning procedure, without jeopardizing the provisions in article 29.

Article 28 Grouping

1. Groupings of individuals or companies can be constituted, whatever the activity they perform, even if between them there is no legal form of association.
2. The members of a candidate or competitor grouping cannot be candidates or competitors in the same procedure, nor be part of another candidate or competitor grouping.
3. All the members of a group are jointly responsible to the contracting authority for the validity and compliance of the tender.

4. In case of awarding, all the members of the group, and only these, must join together before the contract is concluded, in the legal form foreseen in the parts of the procedure.

Article 29 **Impediment**

1. Natural or legal persons may not be candidates, invite or compete or be part of any grouping who:
 - a) Are in a situation or process of insolvency, cessation or suspension of activity, dissolution or liquidation;
 - b) Are in default of any monetary obligation whose creditor is the State or another public entity, namely taxes and social security contributions;
 - c) Have been convicted, by a final decision in the last five years, of an offence related to their professional conduct, the provision of false statements or misleading information regarding their qualifications for the conclusion of a contract with a contracting entity;
 - d) Have been convicted in the last ten years by a final judgement of corruption, influence peddling, swindling, tax fraud, money laundering, criminal association, terrorism, terrorism financing or human trafficking;
 - e) Have provided, directly or indirectly, technical advice in the preparation or elaboration of parts of the procedure;
 - f) Are covered by conflicts of interest that cannot be effectively corrected by other measures less onerous than exclusion;
 - g) Have, in the last two years, terminated contracts for just cause or have been condemned, by a final and unappealable decision, to pay compensation resulting from breach of contract;
 - h) Have been subject to an accessory sanction of prohibition to participate in provisioning procedures that have not yet expired;
 - i) Adopt, participate, support or encourage the conducts listed in No. 1 of article 32.
2. The impediment foreseen in the previous number also applies to the legal entities when their managers, directors or management organs are in any of the situations listed therein.

Section 30
Qualification

1. The candidate or competitor must present a statement, under oath, that he is not impeded to participate in the provisioning procedure, as well as the documentation that is required in the pieces of the procedure.
2. The adjudicating entity can additionally request, at any time, the presentation of any documental proof of qualification.

Article 31
Qualification

1. The candidate or competitor must have the qualifications required by law and established in the parts of the procedure relative to his technical, legal, commercial, and/or financial capacity.
2. The candidate or competitor must present documentation proving the qualifications held.
3. The adjudicating entity can request additionally and at any time the presentation of any documents proving the qualifications.

Article 32
Conduct of private parties

1. The private subjects must not adopt, participate, support or stimulate the following conducts:
 - a) Promising or delivering advantages or patrimonial benefits with a view to influencing actions, decisions or deliberations that benefit them or harm other private subjects;
 - b) Providing false or incomplete information with the aim of obtaining actions, decisions or deliberations that benefit them
 - c) Presentation of false documents;
 - d) Offenses or threats to people or patrimony, with the objective of obligating them to actions, decisions or deliberations in the provisioning procedures or in the contracts;
 - e) Practices that restrict competition that are translated as acts of collusion or simulation between private subjects, during the procedure, with the intent of conditioning the proposals or distorting the participation of other private subjects.
2. The private subjects that incur in any of the practices foreseen in the previous number must be excluded from the provisioning procedure in question.

3. The exclusion process of private subjects is instructed by the adjudicating entity, with the notification of those interested regarding the facts and justifications for their exclusion, where a period of 10 days for a response must be given to the interested party, after which a decision is issued by the competent organ for the decision to open the provisioning procedure.
4. The final decision of exclusion can be the object of complaints and the resources foreseen in the present document.
5. Whenever the exclusion foreseen in the previous paragraphs is judged, the interested parties are subject to the regime of administrative offenses foreseen in the present document and the civil and criminal responsibility under the terms of the law.

TITLE III SUPPLY PROCEDURE

CHAPTER I TYPES OF PROVISIONING PROCEDURE

Article 33 Types of procedure

1. The provisioning procedures can be of the following types:
 - a) Tender;
 - b) Quotation solicitation; c) Direct adjustment.

Article 34 Tendering

1. The bid is a competitive and open provisioning procedure, which allows the participation of all people, individuals or companies, as well as groups, without jeopardy to the following number.
2. When the technical or financial complexity justifies it, the public bid can integrate a pre-qualification phase for the previous evaluation of the technical, commercial or financial capacity of the competitors, developed, in a first moment, through a notice for the presentation of candidacies and, in a second moment, through an invitation to the candidates admitted to present proposals.

Article 35 The request for quotes

The request for quotes is a competitive provisioning procedure of restricted scope that is developed through the sending of an invitation to at least three people, individuals or companies, or groups, to present proposals.

Article 36
Direct Adjustment

The direct adjustment is a non-competitive provisioning procedure of limited scope that takes place by means of the sending of an invitation to a natural or collective person, or group, to present a proposal.

CHAPTER II
VALUE OF THE PROVISIONING PROCEDURE

Article 37
Value of the provisioning procedure

1. The value of the provisioning procedure corresponds to the maximum value that the adjudicating entity is willing to pay for the good, service or work, including the value that must be withheld at the source for tax payment.
2. The value referred to in the previous number must be based on the estimate of the respective expense, being expressed in US dollars.
3. The determination of the estimate of the expense shall take into account:
 - a) The price to be paid by the adjudicating entity;
 - b) The value of the consideration to be paid by the private contractor;
 - c) The value of goods or services which the contracting entity places at the disposal of the private contractor and which are necessary for the performance of his services;
 - d) The value of any prizes for unsuccessful performance to be provided for in the contract.
4. The fractioning of the provisioning and of the contract in provisioning and contracts of partial value with the intention of subtracting them from the rules foreseen in the present document is prohibited.

CHAPTER III
CHOICE OF PROVISIONING PROCEDURE

Article 38
General rule

1. As a rule, the bid must be adopted as the provisioning procedure, whenever another procedure does not reveal to be more appropriate.
2. The adoption of the procedures of quote request and direct adjustment can only occur under the terms foreseen in the following articles.
3. The decision of choice of the provisioning procedure is always justified by the adjudicating entity.

4. When the adoption of the quote solicitation and direct adjustment procedures is based on the situations foreseen in article 42, the justification must be accompanied by an opinion and or documents that prove the verification of the situations listed.

Article 39

Procedure with a value equal or superior to USD 100.000

1. In the provisioning procedures with a value equal or superior to USD 100.000, the adjudicating entity must adopt as provisioning procedure the bid.
2. The adjudicating entity can adopt as provisioning procedure the request of quotes or the direct adjustment in the situations foreseen in Article 42.

Article 40

Procedure of a value inferior to USD 100.000

1. In provisioning procedures with a value inferior to US\$ 100.000, the adjudicating entity can adopt as the provisioning procedure the bid or the request of quotes.
2. The adjudicating entity can adopt as provisioning procedure the direct adjustment in the situations foreseen in Article 42.

Article 41

Procedure of a value inferior to USD 10.000

In provisioning procedures with a value inferior to USD 10.000, the adjudicating entity can adopt as provisioning procedure the bid, the request of quotes or the direct adjustment.

Article 42

Special rules

1. The adjudicating entity can adopt as a provisioning procedure the request for quotes and the direct adjustment, regardless of the value of the procedure, in the following situations;
 - a) In situations of absolute necessity, in the sequence of an unforeseen event that puts public life, health or safety in risk, which imposes the need to acquire or lease goods, services or perform works, to avoid the loss or remove human lives and goods of high value from a situation of danger;
 - b) In cases of imperative urgency, where the performance of the provision cannot be postponed, under the penalty of causing an irreparable damage or one that is difficult to repair, or the performance becomes impossible, and there is no justifiable possibility of, in a timely manner, resorting to another type of provisioning procedure to solve situations unforeseeable for the adjudicating entity and only in the strict measure of what is necessary for this;

- c) When the procurement is directed towards obtaining a prototype for an original service or good or for purposes of experimentation, research, experience or original creation;
 - d) By force of the protection of patents or other industrial property rights, copyrights or other exclusive rights or intellectual property, recognized by law;
 - e) When in a previous provisioning procedure by bidding or request for quotations, no candidate has presented himself or no competitor has presented a proposal or all the proposals presented have been excluded and as long as the specifications and, if applicable, the qualification requisites are not substantially altered;
 - f) When the object of the provisioning is the acquisition or creation of a work of art or an artistic show;
 - g) For the provisioning of legal services of forensic representation in judicial or arbitration processes and specialized services of arbitration and international conciliation;
 - h) For the acquisition of material of a military and security nature;
 - i) For the additional supply of goods and services or execution of works, of goods that have the purpose of substituting parts, the extension or continuation of services or goods for existing equipment, software, services or facilities where the substitution of the supplier would result in the acquisition or leasing of goods, provision of services or execution of works that do not meet the requisites of adaptability or compatibility;
 - j) As a result of a design competition.
2. The adjudicating entity can adopt the direct adjustment as the provisioning procedure, regardless of the value of the procedure, in the following situations:
- a) When there is only one supplier that has specific and exclusive rights relative to the goods, services or works or there is no reasonable alternative or substitute for the acquisition or rental of goods, provision of services or execution of works;
 - b) When there is no competition for technical reasons.

CHAPTER IV

PIECES OF THE PROVISIONING PROCEDURE

Article 43

Type of pieces

1. The pieces of the provisioning procedure, without damage of the simplified regimes foreseen in the present document, are the following:
 - a) In the bid, the announcement, the program of the procedure and the specifications and, when it has a pre-qualification phase, the invitation;
 - b) In the request for quotations and in the direct adjustment, the invitation and the specifications.
2. The provisions of the procedure program and the specifications take precedence, in case of divergence, over the remaining procedure documents.

Article 44 **Announcement**

1. The announcement is the part of the procedure through which the awarding entity informs the potential interested parties of the opening of a bid and how the other parts of the procedure can be known.
2. Notice contains the following elements:
 - a) Identification of the bid;
 - b) Identification and contacts of the adjudicating entity;
 - c) Identification and contacts of the provisioning entity or service
 - d) Identification and contacts of the entity or provisioning service;
 - e) Object of the bid;
 - f) Type of procedure
 - g) Value of the provisioning procedure;
 - h) Indication of the contract by batches and if necessary, the maximum number of batches that can be adjudicated to a competitor;
 - i) Special conditions of the provisioning or contracting, should they exist;
 - j) The place where the contract will be executed;
 - k) The period of performance of the services and/or the duration of the contract;
 - l) Required qualification documents;
 - m) Required qualifications and qualification documents;
 - n) Form of consultation of the parts of the procedure;
 - o) Price for the supply of the parts of the procedure, when it is not free of charge;
 - p) Place, date and time of the prior conference;
 - q) Form of presentation of the proposals;
 - r) Time limit for the presentation of the proposals and indication whether it is urgent;
 - s) Minimum period of validity of the proposals;
 - t) The award criteria;
 - u) The obligation to provide or waive a performance and/or quality guarantee;
 - v) The obligation to pay taxes at the legal rates in force, including the obligation to withhold taxes at source under the terms of the law.
3. In the provisioning procedures by tendering with a pre-qualification phase, the elements listed in paragraphs o) to q) of the previous number are replaced by the elements listed in article 83.

4. The announcement is published on the Provisioning Portal.

Article 45 **Invitation**

1. The invitation is the part of the procedure whereby the contracting entity requests the presentation of a proposal to the natural or legal persons or groups it chooses or to the selected candidates.
2. The invitation is the same for all the recipients and contains the elements foreseen in No. 2 of the previous article, with the necessary adaptations, except for those that are not appropriate for the type of procedure.
3. In the provisioning procedures by quotation request or direct adjustment, the invitation contains, additionally, the foreseen elements in paragraphs 2 and 3 of the following articles, with the necessary adaptations, except those that are not appropriate for the type of procedure.

Article 46 **Procedure program**

1. The procedure program is the part of the procedure that presents the information about the provisioning procedure and defines the rules it obeys.
2. The procedure program establishes the dates when each step of the provisioning procedure is expected to take place, from the opening up to the adjudication.
3. The procedure program also includes the following elements
 - a) Information contained in the announcement;
 - b) Documents that must accompany the proposals and the manner in which they are presented;
 - c) Indication of the documents that can be presented in a foreign language and in which language they can be presented;
 - d) Time limit for the correction of irregularities found in the documents presented;
 - e) Possibility and method of negotiation of the proposals;
 - f) Model for evaluating the proposals, explaining the factors and sub-factors of evaluation and their weighting;
 - g) Existence of essential factors, if any;
 - h) Tie-breaker criteria;
 - i) The numerical value below which the proposals are excluded, if any;
 - j) Other documents required by the procedure in question;
 - k) In case of urgent deadline, the justification of the urgency.

Article 47
Contract documents

1. The specifications shall be the set of general and specific clauses of a legal, technical and financial nature which must be included in the contract to be awarded.
2. The specifications may not refer to a specific make or source, or a particular procedure that characterises the products or services, or to trade marks, patents, types or a specific origin or production method.
3. The mention referred to in the previous number may, exceptionally, be made when the object of the contract justifies it and it is not possible to present a sufficiently precise and intelligible description of it without recourse to this reference, and it must be accompanied by the mention "or equivalent", and it cannot result in the reduction of equality and competition or the favouring of certain competitors or proposals.
4. The clauses of the specifications relative to the aspects submitted to competition and dependent on the proposals presented must be fixed by parameters or limits to which the proposals are bound.
5. The specifications can foresee the possibility of the presentation of variant proposals, as well as the rules for their presentation.
6. The specifications of the provisioning procedure for the formation of a contract for the execution of works integrates an execution project, which can include, depending on the nature, characteristics and complexity of the work, written and drawn parts, accompanied by a descriptive memory, environmental, social and economic studies, test and demonstration results, method or construction process, work plan, financial chronogram, finishing touches map, rubric system and unit price list.
7. In cases where the contractor must assume, under the terms of the specifications, obligations of result related to the use of the work to be done or in which the technical complexity of the constructive process of the work to be done requires, due to the specific technicality of the competitors, the special connection of the competitors to the conception of the work to be done, the contracting entity may foresee as a clause of the contract to be signed the elaboration of the execution project by the contractor, in which case the specifications must integrate only a preliminary program.
8. Where the services constituting the subject-matter of the contract to be awarded are obviously simple, the clauses in the specifications may consist merely in setting out technical specifications and a reference to other essential aspects of the performance of the contract, such as value or duration.

Article 48
Clarifications and rectification of the documents

1. The awarding entity can, on its own initiative or at the request of interested parties, proceed to the rectification of errors or omissions of the parts of the procedure, as well as provide clarifications.
2. The interested must request the necessary clarifications for the good understanding and interpretation of the parts of the procedure and present a list in which they identify, expressly and unequivocally, the errors and omissions of the parts of the procedure that they detected before the expiration of one third of the deadline fixed for the presentation of the proposals.
3. In the provisioning procedures by tender, the adjudicating entity performs a previous conference before the expiration of one third of the deadline established for the presentation of the proposals, for the provision of clarifications and possible correction of errors or omissions of the parts of the procedure.
4. The rectification of errors or omissions in the procedure documents, as well as the provision of clarifications, may occur until the deadline for the submission of applications or tenders.
5. If the correction of errors or omissions in the parts of the procedure, as well as the provision of clarifications, occurs after the expiration of two thirds of the deadline for the submission of proposals, the deadline for the submission of proposals shall be extended by at least the same number of days that exceeded the two thirds of the deadline initially set for the submission of proposals.
6. The rectification of the parts of the procedure for the correction of errors or omissions becomes an integral part of the parts of the procedure and prevails over them in case of divergence.
7. Any corrigendum to the procedure documents made by the contracting authority, as well as the clarifications provided by the contracting authority, shall be published immediately by the same means by which the procedure documents were published.

CHAPTER V
SPECIAL CONDITIONS

Article 49
Promotion of the development of the national economy

1. In the provisioning procedures of a value inferior to USD 100.000, and when it contributes for the promotion of the development of the national economy, the adjudicating entity can establish the condition that the competitors or candidates are national citizens or collective people incorporated in Timor-Leste and more than 50% owned by national

citizens, as well as having residence or headquarters in one or more administrative districts in particular.

2. The condition foreseen in the previous number can also be established in the provisioning procedures of a value equal or superior to USD 100.000 if the object of the provisioning is relative to sectors, goods, infrastructures or administrative districts qualified by a Government resolution as strategic or object of special protection.
3. In the provisioning procedures of a value superior to US\$ 1.000.000, the adjudicating entity can establish the condition that the proposal contributes to the economic and social development and the national innovation and for the creation of local jobs and foresee the transference of technology or know-how to the workers and local companies, as well as foresee the acquisition of a minimum proportion of goods and services at a local or national level or the employment of a minimum of national workers.

Article 50 **Conditional recruitment**

1. The contracting authority may stipulate that the procurement be conditional on the occurrence of a certain condition or on its occurrence within a certain period of time, provided that this is clearly identified in the contract documents.
2. In the situation provided for in the previous number, the awarding entity can unilaterally give up the contracting in case the condition previously defined does not occur or does not occur within a certain period of time, without incurring in liability before the interested parties, candidates, invitees, competitors or adjudicators.

Article 51 **Adjudication by lots**

1. The adjudicating entity can foresee the possibility of adjudication by lots when the formation of contracts for the acquisition or rental of goods or the provision of services with a value greater than USD 100,000 and the execution of works with a value greater than USD 500,000 is at stake.
2. The decision of adjudication by lots is based on the cumulative verification of the following situations:
 - a) When the services to be covered by the object of the contract are technically or functionally fissile and their separation does not cause inconvenience to the contracting entity;
 - b) When the management of a single contract does not prove to be more efficient for the contracting entity.
3. The contracting authority may limit the maximum number of lots that may be awarded to a tenderer.

4. Where there is a limit on the maximum number of lots that may be awarded to any one tenderer, the evaluation criteria shall also contain the objective criteria on which the choice of the lots to be awarded to each tenderer is based.
5. The value of the procedure shall be the sum of the values of the lots.

Article 52
Variant tenders

1. Tenders may contain details of alternative contract conditions relating to one or more aspects of performance of the contract to be awarded, where expressly provided for in the specifications.
2. The specifications shall state the minimum requirements which variants must meet and the maximum number of variants which may be submitted and the procedure for submitting them.
3. Submission of variants shall necessitate submission of a basic tender.
4. The exclusion of the basic tender necessarily implies the exclusion of the variant tenders submitted by the same tenderer.
5. In cases where the specifications do not permit the presentation of variant tenders, each tenderer may only present one single tender.

CHAPTER VI
PANEL OF THE PROCEDURE

Article 53
Nomination and constitution of the jury

1. The proposals submitted in the ambit of the bid and request for quotes are analyzed and evaluated by a jury, constituted by people of recognized ability and personal and professional idoneousness, appointed by the competent organ by the decision of the opening of the provisioning procedure, which performs its competencies with autonomy and technical independence.
2. The jury is made up of an odd number of effective members, a minimum of three, of which one is the chairman.
3. Representatives of the provisioning service or the National Provisioning Commission, in the cases where the provisioning procedure is instructed by this one, to promote the legality and conformity of the jury's work, to elaborate the minutes and to provide administrative support, accompany the jury's work and participate in its meetings without the right to vote.

4. Experts or technicians can be invited to participate in the jury's meetings to support the jury's work in their respective specialty areas, without the right to vote.
5. In the provisioning procedures of strategic interest, high value or great social impact, namely in terms of relocation of people, members of civil society and non-governmental organizations can be invited to participate in jury meetings, without the right to vote.
6. The rules of conduct foreseen in article 26 are applicable, with the necessary adaptations, to the subjects referred to in paragraphs 4 and 5.

Article 54 **Competencies of the jury**

1. The following are competencies of the jury, besides others specified by law or in the pieces of the procedure;
 - a) Proceed with the opening, analysis, and evaluation of the candidacies in the bid with the pre-qualification phase;
 - b) To elaborate the report evaluating the candidatures;
 - c) To proceed with the opening, analysis and evaluation of the proposals; d) To proceed, if necessary, with the negotiation;
 - d) To prepare the report evaluating the proposals.

Article 55 **Operation of the jury**

1. The jury begins its functions from the date of publication of the announcement or sending of the invitation and remains constituted until the adjudication.
2. The jury can only function when the number of members present in the meeting corresponds to the number of effective members.
3. The jury deliberates by majority vote, abstentions are not allowed.
4. Should any member cast a dissenting vote, the respective reasons shall be recorded in the minutes.
5. The jury's deliberations shall always be justified and recorded in the minutes.

CHAPTER VII PROPOSAL

Article 56 Proposal

1. The proposal is the statement by which the competitor manifests his will to contract and the way he is willing to do it.
2. The proposal is made up of the following documents:
 - a) Declaration of the competitor, under oath, of unconditional acceptance of the specifications;
 - b) Declaration of the competitor, under oath, that he is not impeded from participating in the provisioning procedure;
 - c) Technical proposal, which includes the documents relative to the execution conditions;
 - d) Financial proposal, which includes the price;
 - e) Justification note of abnormally low price, when the price presented in the proposal is abnormally low under the terms of No. 2 or 3 of article 61;
 - f) Other documents required by the pieces of the procedure.
3. In the case of procedures for the formation of contracts for the execution of works, the proposal also includes the following documents:
 - a) Work program, including manpower and equipment plans;
 - b) Unit price list of all kinds of works foreseen in the execution project;
 - c) A preliminary study, when the execution project is the responsibility of the adjudicator.
4. Together with the proposal, the competitor must present the required qualification documents.
5. The prices in the proposal are indicated in numbers, and can also be written out in full; in case of divergence, the amount written out in full prevails.
6. When several prices are indicated, in case of divergence, the partial prices, unit or not, that are more broken down, shall prevail.

Article 57 Presentation of the proposal

1. The documents that constitute the proposal are presented through the Provisioning Portal.

2. The receipt of the proposals must be recorded, noting the date and time of arrival and the order number of presentation and providing confirmation of its receipt.
3. Each competitor can only present a single proposal, without prejudice of the presentation of variant proposals, when accepted by the specifications.
4. If a competitor presents more than one proposal, the proposal presented last within the deadline is considered.

Article 58

Deadline for the presentation of the proposal

1. The deadline for the presentation of the proposals is set by the adjudicating entity, taking into account the time necessary for its preparation according to the type of procedure and the technical complexity of the contractual services, with respect for the minimum limits established in the present document.
2. The adjudicating entity can extend the initial deadline for an adequate period, when there are reasons that justify it.
3. All the interested parties, invitees or competitors must be notified, simultaneously, of all the extensions.

Article 59

Validity of the proposal

1. The proposal must indicate its validity period, according to the minimum period established in the parts of the procedure.
2. The minimum period must be fixed taking into account the time necessary for the evaluation of the proposals and the awarding according to the type of procedure and the technical complexity of the contractual services, and cannot be less than 90 days from the deadline for the presentation of the proposals.

CHAPTER VIII

EXAMINATION AND EVALUATION

Article 60

Examination of tenders

1. Proposals shall be examined with a view to their acceptance and evaluation.
2. The proposals are analyzed in all of its attributes, namely the compliance with the forms, deadlines, terms and conditions defined in the procedural documents.
3. Proposals that are in the following situations shall be excluded:
 - a) That are presented after the deadlines established for their presentation;

- b) Which do not consist of the elements provided for in Article 56;
- c) That do not present the documents required in the pieces of the procedure;
- d) That are presented by competitors to which there exists some impediment or that do not have the qualifications required by law or established in the parts of the procedure;
- e) Which are presented by groupings in violation of the rules for the constitution of groupings;
- f) Are presented in violation of the terms foreseen in the specifications;
- g) Do not reach the minimum technical classification required under the terms of the procedure's documents;
- h) Which have a value that exceeds the value of the procedure;
- i) That contain an abnormally low price, without prejudice to the presentation of justification and its acceptance by the jury;
- j) That reveal the existence of strong indications of the practice of acts or agreements susceptible of distorting the competition rules or violate specific rules about the matter defined in the procedure's documents;
- k) Which are presented as variant proposals when it is not admitted by the parts of the procedure or when, despite being admitted, no basic proposal is presented;
- l) Which present false documents or statements.

Article 61 **Abnormally low price**

1. The presentation of an abnormally low price determines the exclusion of the proposal, without prejudice to the following paragraphs.
2. An abnormally low price is considered to be a price that does not reach 70% of the value of the procedure.
3. If the contract documents also set partial values for different parts of the contract, a partial price that falls short of 70% of the partial values laid down in the contract documents shall also be considered as an abnormally low price.
4. The presentation of an abnormally low price does not determine the exclusion of the proposal if the competitor presents a technical justification for the value and this is accepted by the jury, based on, namely:
 - a) In the conformity of the prices presented and their economic rationality;
 - b) In the economy of the construction process, manufacturing or service provision;
 - c) In the technical solutions adopted or in the exceptionally favorable conditions that the competitor has proven to have for the execution of the service object of the contract to be signed;
 - d) In the originality of the goods, services or works proposed;
 - e) The specific work conditions that the competitor benefits from.

5. The jury can request clarifications regarding the abnormally low-price justification presented by the competitor.

Article 62 **Assessment**

1. The evaluation of the proposals consists in their scoring and classification considering the factors and possible sub-factors and the awarding criteria defined in the pieces of the procedure.
2. The procedure documents must clearly establish the awarding criteria and the evaluation factors and possible sub-factors, as well as an objective and justifiable evaluation matrix based on a scale that allows for the scoring and classification of all the proposals.
3. For each factor and possible sub-factors, a scoring scale shall be defined through a mathematical expression, as well as the respective weighting coefficients of each factor and possible sub-factors, if they are not equal.
4. The measure of satisfaction of the evaluation factors and eventual sub-factors must consider the situations, qualities, characteristics, properties or other elements of the proposal.
5. The evaluation factors and any sub-factors shall consider the possible benefits, such as the use of international standards, and the costs of each tender, including the useful life of the subject matter of the contract, the costs associated with contract performance, including maintenance, externalities, economic risks, the objectives of the contract and the satisfaction of public needs and public interests.
6. The parts of the procedure may identify certain evaluation factors as essential for the formation of the contract which, if not fulfilled, will result in the exclusion of the proposal.
7. The overall score of each proposal, expressed numerically, corresponds to the result of the sum of the partial scores obtained in each factor and possible sub-factors, multiplied by the values of the respective weighting coefficients.
8. The pieces of the procedure may define a numeric value relative to the partial scores obtained in each factor and eventual sub-factors and/or to the global score below which the proposals are excluded, which cannot correspond to more than two thirds of the total value.
9. Where the award criterion implies a technical evaluation and a financial evaluation, the technical evaluation shall be carried out first and the financial evaluation shall be carried out only for the tenders not excluded as a result of the technical evaluation.

10. Depending on the award criterion, tenders shall be ranked from the highest overall score to the lowest overall score.
11. The pieces of the procedure must define the tie-breaker criterion in the evaluation of the proposals, the time of the proposal submission cannot be adopted as tie-breaker criterion.
12. The scoring of the factors and sub-factors evaluated in descending order of relative weighting and, as a final tie-breaker, the drawing of lots among the tied proposals may be adopted as tie-breaking criteria.

Article 63 **Factors and sub-factors**

1. The factors and possible sub-factors are the evaluation elements that allow the proposals to be scored and classified.
2. The factors and possible sub-factors to be evaluated are derived from the object of the contract to be concluded and from the aspects of the execution of the contract submitted for competition in the parts of the procedure.
3. The factors and possible sub-factors can be, in particular, the following:
 - a) Quality, namely technical value, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and supply conditions;
 - b) Organisation, qualifications and experience of the staff assigned to performing the contract in question, where the quality of the staff employed has a significant impact on the level of performance of the contract;
 - c) After-sales service and technical assistance and delivery conditions, in particular the date of delivery, the delivery process, the delivery or performance period and the time for provision of assistance;
 - d) Environmental or social sustainability of the way the contract is executed, namely in relation to the time of transport and availability of the product or service, in particular in the case of perishable products, and to the designation of origin or geographical indication, in the case of certified products.

Article 64 **Award criteria**

1. The award criterion is the method for classifying tenders.
2. The award criterion is defined in the parts of the procedure.
3. The award criterion shall be:

- a) Best value for money;
 - b) The lowest price;
 - c) Best technical quality.
- 4. As a rule, the awarding criteria must be the best quality-price relationship, in which a set of factors related to the competitor's capacity, to the object of the contract and to the price are evaluated, without prejudice to the following number.
 - 5. In the case where the parts of the procedure define all of the elements of the execution of the contract to be signed with the exception of the price, the awarding entity may establish the lowest price awarding criterion.
 - 6. Where the contract documents lay down a fixed price, the contracting authority may lay down the award criterion of best technical quality.

CHAPTER IX AWARD OF CONTRACT

Article 65 Awarding

- 1. The adjudication is the act by which the adjudicating entity chooses the competitor with whom it will celebrate the contract.
- 2. In the provisioning procedures by bidding or request for quotes the adjudication must fall on the competitor who presented the best classified proposal after the application of the adjudication criteria.
- 3. In the provisioning procedure by direct adjustment, the adjudication falls on the only competitor, in case his proposal is accepted by the adjudicating entity.
- 4. With the exception of the direct adjustment procedure, the adjudication presupposes the previous approval of the evaluation report of the proposals.
- 5. The competence for the approval of the report of the evaluation of the proposals and the adjudication decision belongs to the competent organ by the decision of the opening of the provisioning procedure.
- 6. In the direct adjustment procedure, the adjudication decision consists of the acceptance of the proposal presented by the competent organ by the decision of the opening of the provisioning procedure.
- 7. When there is an adjudication by lots, there might be an adjudication decision for each lot, where such decisions can occur in different moments.
- 8. The awarding decision must be taken until the end of the validity period of the proposals.

9. Once the proposals evaluation report has been received, the competent organ for the adjudication must return it to the jury when it does not meet the legal requirements, is incomplete or presents difficulties of understanding, and the jury must proceed with the necessary and appropriate technical clarifications, corrections and deepening.
10. Even if the report evaluating the proposals is approved, the adjudication must not be done when any of the following hypotheses are verified:
 - a) No competitors have presented proposals;
 - b) All the proposals have been excluded;
 - c) The procedure presents flaws that may configure invalidities;
 - d) In the case of conditional contracting, the condition previously defined does not occur or does not occur within a certain period of time;
 - e) The adjudication is contrary to the public interest.
11. The adjudication decision, along with the report of the evaluation of the proposals, must be published on the Supply Portal and notified to the competitors that are not excluded so they can, if they so desire, present a complaint within a period of 10 days.
12. The decision of non-attribution must be notified to the competitors that have not been excluded and determines the termination of the procedure.

TITLE IV CONDUCT OF THE PROVISIONING PROCEDURE

CHAPTER I PHASES OF THE PROVISIONING PROCEDURE

Article 66 Phases of the provisioning procedure

1. The provisioning procedure has the following phases:
 - a) Provisioning planning
 - b) Preparation of the provisioning procedure
 - c) Execution of the provisioning procedure.

CHAPTER II PROVISIONING PLANNING

Article 67 Provisioning Plan

1. The services and entities of the Public Administrative Sector approve annually, together with the annual plan, a provisioning plan.
2. The provisioning plan must be based on the activities of the annual plan and take into account, namely:

- a) The provisioning of the budget;
 - b) The fulfillment of legal obligations;
 - c) The functioning needs of the service or entity;
 - d) The organisational capacity of the service or entity;
 - e) Any economies of scale.
3. When the need arises to perform a provisioning procedure that is not foreseen in the provisioning plan, the plan must be updated before the beginning of the procedure, without damage of the recourse of the urgent direct adjustment referred to in article 96.
 4. Under the provisioning plan preparation, the services and entities of the Public Administrative Sector can perform market consultations with the objective of obtaining information about the market conditions relative to the good, service or work they intend to contract.
 5. The preliminary consultations referred to in the previous number, do not bind the adjudicating entity or the consulted entities, nor have a negotiation nature, under the scope of the procedures to be performed.

Article 68

General provisioning announcements

1. The services and entities of the Public Administrative Sector must publish an announcement that identifies all the provisioning procedures that they foresee to perform in the following year, which must contain, for each provisioning procedure
 - a) Identification of the adjudicating entity;
 - b) Object of the provisioning procedure;
 - c) Estimate of the value of the provisioning procedure;
 - d) Estimate of the month in which the provisioning procedure will begin.
2. The announcement referred to in the previous number must serve as the guiding document of the preparation and execution of the provisioning procedures announced.
3. The publication of the announcement has a merely indicative nature and does not oblige the adjudicating entities to open the provisioning procedures announced, nor creates in private subjects any expectation of this opening.
4. The announcement must be published on the Provisioning Portal within 60 days after the date of the presentation of the law proposal of the State General Budget to the National Parliament.

CHAPTER III
PREPARATION OF THE PROVISIONING PROCEDURE

Article 69
Provisioning Project

1. For the start of a provisioning procedure, the adjudicating entity prepares a provisioning project to be submitted to the decision of authorization of the expense and the decision of the opening of the provisioning procedure.
2. The provisioning project is constituted by a summary report that presents the justification for:
 - a) The opening of the provisioning;
 - b) The definition of the value of the provisioning procedure;
 - c) The choice of the type of provisioning procedure.
3. The provisioning project is also constituted by the provisional calendar of the procedure, which identifies all phases, acts and deadlines of the procedure, including the deadlines for eventual complaints and resources, its analysis and response.

Article 70
Decision to open the provisioning procedure

1. The provisioning procedure begins with the decision to open the provisioning procedure.
2. The decision to open the provisioning procedure is made in writing, must be substantiated and is based on the provisioning project.
3. The decision to open the provisioning procedure is dependent on the previous authorization of the respective expense by the competent organ, under the terms of the law and the provisioning forecast in the provisioning plan for the respective year.
4. In case the competent organ for the decision of the opening of the provisioning procedure is also the competent organ for the decision of authorization of the expense under the terms of the law, both decisions can be combined in a single decision.
5. In the case of procedures for the formation of contracts for the execution of works, when the adjudicating entity is covered by the scope of action of the National Development Agency, I.P., the decision to open the provisioning procedure is also dependent on the previous opinion of this entity.

Article 71
Approval of the parts of the procedure

1. The adjudicating entity prepares the provisioning parts and submits them for approval of the competent organ for the decision of the opening of the provisioning procedure.

2. The approval decision of the pieces of the procedure is dependent on the decision of the opening of the provisioning procedure by the competent organ, under the terms of the previous article, and can occur together with it.
3. The decision of approval of the pieces of the procedure is done in writing.

CHAPTER IV EXECUTION OF THE PROVISIONING PROCEDURE

SECTION I TENDER

Subsection I Proceedings

Article 72 Stages of the provisioning procedure by tender

1. The provisioning procedure by bidding has the following stages:
 - a) Opening of the bid;
 - b) Prior conference;
 - c) Presentation of the proposals
 - d) Analysis and evaluation of the proposals
 - e) Adjudication.
2. When it includes a pre-qualification phase, the public bidding also has the stages described in paragraph 7 of Article 82, which take place at the beginning of the procedure.
3. The public bidding can also have a negotiation phase prior to the awarding, pursuant to articles 79 and following, with the purpose of optimizing the proposal presented.

Article 73 Opening of the bidding

1. The bid opening is the step of the procedure where the beginning of the provisioning procedure is made known to all potential competitors.
2. The opening occurs with the publication of the announcement on the Provisioning Portal.
3. The parts of the procedure must be made available for consultation by interested parties during the period, at the place and time indicated in the announcement and, if possible, on the Procurement Portal.

Article 74
Prior conference

1. In the place, date and time indicated in the announcement, a previous conference is held in order to clarify all the details relative to the procedure in progress.
2. The previous conference can include the visit to the place or places where the goods, service or work must be provided.
3. The prior conference has a public character, and all those who wish to attend may do so.
4. Verbal instructions given at the prior conference do not prevail over the pieces of the procedure, without prejudice to their rectification.

Article 75
Deadline for the presentation of the proposals

1. The deadline for the presentation of the proposals is the one that appears in the parts of the procedure, and a deadline for the presentation of the proposals cannot be established for less than 15 days.
2. In the case of procedures with a value superior to US\$ 1.000.000, a deadline for the presentation of the proposals cannot be fixed inferior to 30 days.
3. In case of duly founded urgency, the time limits established in the previous numbers can be reduced by half and the applicable time limit and the justification of the urgency must be included in the parts of the procedure.

Article 76
Presentation of the proposals

1. The competitors must present their proposals within the deadline defined in the parts of the procedure, being able to modify them or withdraw them until the end of the deadline for their presentation.
2. Within three days after the deadline for the presentation of proposals, the jury publishes the list of the competitors that presented proposals within the deadline.
3. The interested party that hasn't been included in the list of competitors can complain within five days after the publication of the list, having to present proof of the timely presentation of his proposal.

Article 77
Examination and evaluation of the proposals

1. The jury proceeds with the analysis and evaluation of the proposals as established in the pieces of the procedure.
2. The jury can request the competitors the clarifications it considers necessary for the analysis and evaluation of the proposals.
3. The clarifications provided by the competitors under the terms of the previous number constitute an integral part of the proposals and can only consist in greater detail or interpretative clarification of elements from the proposal and not contradict or change the elements contained in it.
4. After the analysis of the proposals, the jury prepares a report evaluating the proposals, in which it proceeds:
 - a) the exclusion of the proposals on the grounds referred to in Article 60(3)
 - b) The evaluation of the proposals, taking into account the factors and possible sub-factors and the awarding criteria defined in the pieces of the procedure;
 - c) The ordering of the competitors.
5. The evaluation report of the proposals must contain all of the occurrences that took place during the course of the procedure.
6. In case the negotiation phase is foreseen in the procedure documents, the jury proceeds to this phase.
7. Once the final proposals resulting from the negotiation stage have been analysed and evaluated, the jury makes the necessary changes to the evaluation report of the proposals.
8. The report of the proposals' evaluation is sent to all the competitors for a prior hearing, who can comment on its content, in writing, within 10 days.
9. The jury examines and answers the questions presented by the competitors, maintaining or altering the content of the proposals' evaluation report, with or without changes in the classification and ordering.
10. In case there is a change in the ordering, the report of the evaluation of the proposals must be submitted again to a previous hearing under the terms of the previous numbers.
11. After the conclusion of the previous hearing, the jury presents the report of the evaluation of the proposals to the adjudicating entity, along with the other documents of the procedure.

**Article 78
Adjudication**

1. The decision to award or not to award occurs within 10 days from the date the proposals evaluation report is presented by the jury.
2. The awarding decision is based on the previously approved proposals evaluation report.
3. The awarding decision or not is published immediately in the Procurement Portal.

**Subsection II
Negotiation**

**Article 79
Negotiation**

1. In the provisioning procedures with a value superior to USD 500.000 or when the technical complexity of the procedure or its parts justifies it, a negotiation phase can be adopted, with the intent of optimizing the proposals presented, in one of the following modalities:
 - a) With the competitors whose proposals are ranked in the first three places;
 - b) With all the competitors whose proposals are not excluded.
2. The possibility of adopting a negotiation phase and its modality must be provided in the pieces of the procedure.
3. The negotiation referred to in the previous numbers cannot alter the object or purpose of the procedure, but can incur, namely in the following aspects:
 - a) Price and payment conditions
 - b) Precise definition of the specifications;
 - c) Methods and tools used;
 - d) Technical assistance and maintenance;
 - e) Technical and financial guarantees;
 - f) Specific contract management solutions;
 - g) Professional training;
 - h) Transfer of intellectual property.
4. The proposals presented by the competitors during the negotiation must be presented in writing and represent a global improvement in classification in relation to the proposal they submitted to the competition.

**Article 80
Procedure**

1. The negotiation is performed by the jury together with a representative from the adjudicating entity.

2. The jury and the adjudicating entity's representative prepare a negotiation script, which details the format adopted for the negotiation, namely if it takes place separately or together with the various competitors, and may change that format at any time, as long as they are informed beforehand.
3. The script referred to in the previous number can also identify aspects that the adjudicating entity is willing to negotiate or not, as well as identify one or some of the aspects listed in number 3 of the previous article in which or which the negotiation must preferentially focus.
4. The jury notifies the competitors admitted to negotiation, with a minimum antecedence of five days, of the date, hour and place for the negotiation session, as well as the negotiation script, scheduling additional sessions, if necessary, under the terms it deems convenient.
5. The competitors must have identical opportunities to propose, accept and oppose modifications to their proposals during the negotiation sessions.
6. Minutes are drawn up of each negotiation session.
7. The minutes and any other information or communications, written or oral, provided by the competitors to the jury must remain confidential during the negotiation phase.

Article 81

Presentation of the final versions of the proposals

1. When the jury concludes the negotiation, it immediately notifies the competitors to present the final versions of their proposals, which cannot include different conditions from the respective initial conditions relative to aspects that the adjudicating entity has indicated it is not willing to negotiate.
2. Once the final versions have been submitted, they may not be subject to any changes.

Subsection III

Pre-qualification phase

Article 82

Pre-qualification

1. The pre-qualification aims to verify the technical, legal, commercial and/or financial capacity of the candidates so as to allow them to present a proposal.
2. The existence of a pre-qualification phase must be foreseen in the pieces of the procedure.

3. The pre-qualification phase must allow the qualification of all candidates that meet the minimum requirements of technical, legal, commercial and/or financial capacity defined in the parts of the procedure.
4. In the procedures with a value less than US\$ 500.000, a number of candidates to be qualified, no less than five, may be established.
5. For verification of the technical, legal, commercial and/or financial capacity of the candidates a model for evaluation of the candidacies shall be established, being applicable, with the necessary adaptations, that set forth in Article 62.
6. In the event the procedure foresees the qualification of a limited number of candidates, the model of evaluation of the applications must allow for their scoring and ranking.
7. When it includes the pre-qualification phase, the competition also has the following stages, which take place at the beginning of the procedure:
 - a) Announcement for pre-qualification;
 - b) Presentation of the candidatures;
 - c) Analysis and evaluation of the candidatures;
 - d) Qualification.

Article 83
Announcement for pre-qualification

1. The announcement for pre-qualification must contain the elements listed in Article 44(2), as well as, instead of the elements listed in subparagraphs (o) to (q) of that paragraph, the following elements:
 - a) The minimum technical, legal, commercial and/or financial capacity requirements that candidates must fulfil;
 - b) the documents necessary to establish the candidates' qualifications;
 - c) In case it foresees the qualification of a limited number of candidates, the number of candidates to be qualified as well as the evaluation model of the applications;
 - d) The deadline for the presentation of the candidatures; The deadline for the qualification decision;
 - e) The deadline for the presentation of the documents proving the compliance with the minimum requirements of technical and financial capacity, in case these can be presented after the qualification decision.

Article 84
Submission of applications

1. The candidates shall present the applications within the deadline defined in the pieces of the procedure, and a deadline for the presentation of applications cannot be established for less than 10 days.
2. In case of duly founded urgency, the deadline provided for in the previous number can be reduced by half, and the applicable deadline and the justification of the urgency must be included in the pieces of the procedure.
3. The candidacy is made up of the following documents:
 - a) Declaration of the candidate, under oath, that he is not impeded from participating in a provisioning procedure;
 - b) Declaration of the candidate, under oath, of the fulfillment of the minimum requisites of technical, legal, commercial and/or financial capacity that the candidates must fulfill;
 - c) Documents proving the fulfillment of the minimum requisites of technical, legal, commercial and/or financial capacity.

Article 85
Examination and evaluation of applications

1. The jury shall proceed to the analysis and evaluation of the candidatures as established in the pieces of the procedure.
2. The board shall request the candidates the clarifications it deems necessary for the analysis and evaluation of the applications.
3. The clarifications provided by the candidates under the terms of the previous number shall be an integral part of the applications and may only consist of greater detail or interpretative clarification of elements of the application and shall not contradict or change the elements contained in the same.
4. After examining the applications, the jury shall draw up a report evaluating the applications, in which it shall:
 - a) The evaluation of the applications based on the application evaluation model;
 - b) Scoring and ranking the applications;
 - c) The ordering of the candidates, recommending the exclusion of the candidates that do not fulfil the minimum requirements of technical, legal, commercial and/or financial capacity established in the parts of the procedure or, in case the procedure foresees the qualification of a limited number, of the candidates classified beyond the number foreseen;

5. The evaluation report of the candidatures is sent to all the candidates for a prior hearing, who can comment on its content, in writing, within 10 days.
6. The jury examines and answers the questions presented by the candidates in a reasoned manner, maintaining or changing the content of the report of the evaluation of the candidatures, with or without alteration of the classification and ranking.
7. If there is a change in the ranking, the candidacy evaluation report must be re-submitted to a prior hearing under the terms of the previous numbers.
8. After the conclusion of the prior hearing, the jury presents the candidacy evaluation report to the adjudicating entity.

Article 86

Qualification

1. The qualification decision shall take place within 10 days counting from the date of submission of the evaluation report of the candidacies by the jury.
2. The qualification decision is up to the competent organ for the decision of opening the provisioning procedure and is based on the evaluation report of the candidacies.
3. In case the report is incomplete or in need of clarification, the adjudicating entity can return it to the jury so that it can be the object of clarification, correction or technical deepening that allows it to become clear and complete in light of the questions raised.
4. The qualification decision is published immediately in the Procurement Portal.
5. After the deadline for complaints has expired or after the complaints have been decided, the terms of the bidding procedure are followed without the pre-qualification phase, replacing the announcement foreseen therein by the invitation to the qualified candidates.

Section II

The request for quotes

Article 87

The provisioning procedure by quoting requests

1. The provisioning procedure by quoting requests has the following steps:
 - a) Sending of an invitation to the invited; b) Presentation of the proposals;
 - b) Analysis and evaluation of the proposals; d) Adjudication;
 - c) The provisioning procedure by quoting requests can also have a negotiation phase prior to the adjudication, under the terms of article 79, with the intent of optimizing the proposals presented.

Article 88
Submission of the invitation to the invitees

1. The provisioning procedure by request for quotes begins with the sending of an invitation to the invitees.
2. The adjudicating entity is responsible for the choice of the invitees, which must be justified.
3. The adjudicating entity's choice must fall on the private individuals with the capacity to perform the services of the contract that is intended to be concluded.
4. The invitation shall be sent preferably by electronic means.
5. The contracting authority shall provide any clarification requested by the invitees, preferably by electronic means, in order to clarify all the details of the procedure under way, and shall send it to all invitees simultaneously.

Article 89
Deadline for the presentation of proposals

The deadline for the presentation of the proposals is the one that appears in the pieces of the procedure.

Article 90
Subsequent steps

The terms of the provisioning procedure by quotation request, with the necessary adaptations, are applied to the subsequent steps of the provisioning procedure by bidding.

The adjudication decision is immediately published on the Provisioning Portal.

Section III
Direct Adjustment

Article 91
Direct Adjustment

The provisioning procedure by direct adjustment has the following steps:

- a) Sending of the invitation to the guest
- b) Presentation of the proposal;
- c) Adjudication.

Article 92
Sending of an invitation to the guest

1. The procedure for the supply by direct adjustment begins with the invitation sent to the guest.
2. It is up to the contracting entity the choice of the guest, which must be reasoned.
3. The contracting entity must choose a private subject with the capacity to perform the services of the contract that it intends to conclude.
4. The invitation shall be sent preferably by electronic means.
5. The contracting authority shall provide, preferably by electronic means, any clarification requested by the invitee in order to clarify all the details of the procedure under way.

Article 93
Submission of the proposal

The time limit for the submission of the tender shall be stated in the documents relating to the procedure.

Article 94
Adjudication

1. The adjudicating entity can refuse the presented proposal, accept it or invite the competitor to improve the proposal.
2. The decision to adjudicate or not to adjudicate occurs within 10 days from the bid presentation date.
3. The awarding decision is published immediately in the Procurement Portal.

Article 95
Simplified direct adjustment

1. In the case of provisioning procedure by direct adjustment of a value inferior to USD 1.000, the invitation must be sent preferably through electronic means and the adjudication can be done directly on an invoice or an equivalent document, which allows the complete identification of the expense, its object, the date of execution and the private contractor, without additional formalities.
2. The adjudication decision is published on the Procurement Portal within five days.

Article 96
Urgent direct award

1. In case the option for the provisioning procedure by direct adjustment is based on the situations foreseen in paragraphs a) and b) of No. 1 of article 42 and, taking into account the superior public interest, in view of the circumstances of the specific case it is necessary to immediately perform the contract, the acts of the provisioning procedure can be performed and the contract is signed without any legal formalities, namely without changing the provisioning plan, without jeopardy of the provisions in the following numbers.
2. When the provisioning procedure aims at the celebration of a works execution contract, the contractual prices must be determined by the application of the unitary values fixed in a joint ministerial document of the Government members responsible for the public works and by the planning and ordainment.
3. Within 60 days after the adjudication foreseen in No. 1, the pieces and acts of the procedure must be reduced to writing, namely the justification of the need to resort to the provisioning procedure by direct adjustment under the terms of the present article and the justification of the choice of the private contractor, as well as the contract, and the legal formalities must be completed, to allow for the reconstitution of the entire process of expense execution, provisioning and contracting, and the adjudication decision must be published on the Provisioning Portal within five days after the end of this period.

TITLE V
CONTRACTING

CHAPTER I
TYPES OF CONTRACTS

Article 97
Types of contracts

1. The contracts celebrated under the present document are, according to their object:
 - a) Acquisition or leasing of goods;
 - b) Rendering of service;
 - c) Execution of works.
2. In the case where the contract includes elements of more than one type, the type of contract is defined according to the part with the highest value.

CHAPTER II
STAGES OF PROCUREMENT

Article 98
Stages of procurement

Contracting has the following phases:

- a) Conclusion of the contract;
- b) Execution of the contract;
- c) Extinction of the contract.

CHAPTER III CONCLUSION OF THE CONTRACT

Section I Form and execution of the contract

Article 99 Form

All contracts shall be reduced to writing, through the preparation of clauses on paper or in computerized form, without prejudice to the exceptions set forth in the present document.

Article 100 Waiver of written contract

1. The contract might not be reduced to writing in the case of a provisioning procedure by direct adjustment of a value inferior to USD 1.000.
2. In the cases foreseen in the previous number, it is considered that the contract results from the acceptance of the terms of reference or specifications of the proposal, where all the elements considered relevant must be communicated in writing.
3. For the purposes of the previous paragraph, the adjudicating entity must keep all the documents relative to these operations, respective authorisations, technical provisions and specifications.
4. The announcement of the contract must be published in the Provisioning Portal, within 10 days after the acceptance of the proposal.

Section II The content of the contracts

Article 101 Elements of the contract

1. The content of the contract must correspond to that indicated in the pieces of the procedure and include the following elements:

- a) The identification of the parties and their representatives, as well as the title to which they intervene;
 - b) The description of the object of the contract and the contractual services;
 - c) The value and the contract price or prices or the form of its determination;
 - d) The deadline for the performance of the benefits and or for the duration of the contract;
 - e) The reference to the provision or waiver of guarantee of performance, quality and or advance payment;
 - f) The obligation to pay taxes at the legal rates in force, including the obligation to withhold taxes at source under the terms of the law.
2. The following are an integral part of the contract, regardless of its reduction in writing
- a) The clarifications and rectifications of the parts of the procedure;
 - b) The specifications
 - c) The awarded proposal;
 - d) The clarifications about the awarded proposal provided by the adjudicated tenderer.
3. In case of divergence between the documents mentioned in the previous number, the prevalence is determined by the order in which they are indicated in that number.
4. In case of divergence between the documents referred to in paragraph 2 and the clauses of the contract, the former shall prevail, except for the adjustments to the content of the contract proposed by the contracting entity and accepted by the contractor.
5. The contracts that lack any of the elements referred to in paragraph 1 shall be null and void, unless they are contained in the documents identified in paragraph 2.

Article 102

Contract value and contract price

1. The contract price shall be the price or prices to be paid by the public contracting authority for the performance of the service or services which constitute the subject matter of the contract, namely any partial or unit value, during the term of the contract, including any contractually agreed extension of its term.
2. The increase of the price to be paid as a result of:
- a) Objective modification of the contract;
 - b) Restoration of the financial balance foreseen by law or by the contract;
 - c) Premiums for early performance of the services object of the contract.
3. The contract value is the sum of all the prices and values to be paid by the public contracting party for the execution of the service or services that constitute the subject matter of the contract during the term of the contract, including premiums for

anticipated compliance provided for in the contract or any contractually provided extension of the respective term.

4. In the case of contracts which fix the price or prices to be paid by the contractor for the performance of the service or services which are the subject matter of the contract, but which do not establish an obligation to perform them, such performance being dependent on a request from the contractor during the term of the contract, the contract value shall be the sum of all the prices and amounts which the contractor expects to pay.

Article 103

Adjustments to the content of the contract to be concluded

1. The awarding entity may propose adjustments to the content of the contract to be entered into, as long as they result from public interest demands and, in the case of a procedure in which more than one proposal has been analyzed and evaluated, it is objectively demonstrated that the respective ranking would not be changed if the proposed adjustments were included in the pieces of the procedure.
2. The adjustments referred to in the previous number must not imply, under any circumstance:
 - a) A substantial alteration of the parameters fixed in the specifications;
 - b) The inclusion of solutions contained in a proposal presented by another competitor.
3. Proposed adjustments that have been rejected by the contractor do not form an integral part of the contract.

Article 104

Draft contract

1. The draft contract is prepared and approved by the awarding entity.
2. After being approved, the draft must be notified to the contractor for acceptance, expressly indicating the adjustments proposed in accordance with the provisions of the previous article.
3. The minute is considered accepted when there is an express declaration by the adjudicator, when he does not complain about its content within five days or when he provides the required guarantees.
4. The contractor may claim the draft because it contains obligations or charges that were not foreseen in the parts of the procedure or adjustments that were not accepted.
5. The contracting authority decides on the complaint within 10 days and must immediately inform the contractor of its decision.

Article 105
Signing the contract

1. The signing of the contract is done manually, if the draft is on paper, or by affixing electronic signatures, if the draft is on computer.
2. The signing of the contract shall take place within 60 days from the date of acceptance of the draft or the decision on the complaint, but not before:
 - a) 10 days have elapsed from the date of publication of the adjudication decision in the Procurement Portal;
 - b) All the required qualification documents are presented;
 - c) Provided the guarantee, when this is required.
3. The deadline of 10 days foreseen in paragraph a) of the previous number is not applicable when only one proposal has been presented.
4. The contracting authority shall notify the successful tenderer:
 - a) The date, time and place where the signature will take place at least five days in advance, in the case of face-to-face signing of the contract;
 - b) The deadline for signature and access to the contract, which cannot be less than three days, in the case of signature by electronic means.
5. The competent organ for the signature of the contract is the competent one for the decision of the opening of the provisioning procedure.
6. The contract enters into effect on the date established in the contract or, when no date is expressly foreseen for its execution, on the date of its signature by the parties or by the party that signs last.
7. The announcement of the conclusion of the contract must be published in the Provisioning Portal within 10 days after its signature.

Article 106
Non-signature of the contract

1. The contract shall not be signed and the award shall expire in the following cases:
 - a) If, for reasons attributable to him, the contractor does not appear on the day, time and place fixed for signing the contract or does not send the signed contract electronically within the time limit set by the contracting authority, without prejudice to the contracting authority, if it so decides, setting a new time limit;
 - b) If, where the contractor is a group, its members have not associated themselves within the same term.

2. In the cases under the previous number, the adjudicating entity must make a new adjudication, which must fall on the competitor who presented the bid ordered in the subsequent position.
3. If, for reasons attributable to him, the adjudicating entity does not sign the contract within the deadline, the adjudicating entity can withdraw from the proposal, without prejudice to the right to be compensated for all expenses and other costs that he demonstrably incurred with the preparation of the proposal.
4. In the case provided for in the previous number, the adjudicator can, as an alternative, judicially demand the execution of the contract.

Section III **Provision of guarantee**

Article 107 **Types of contractual guarantee**

1. The execution of the contract implies the presentation of:
 - a) Performance bond;
 - b) performance bond; (b) quality bond.
2. Should the contract foresee the payment of all or part of the price before the performance of the respective services by the private contracting party, the conclusion of the contract shall also imply the presentation of an advance payment bond, without prejudice to partial payments after the performance of the respective services.
3. The presentation of performance bonds and quality bonds shall not be mandatory in contracts with a value of less than US\$ 50,000.
4. No performance bond shall be required for immediate performance contracts.

Article 108 **Performance bond**

1. The performance bond shall guarantee the performance of the contract by the private contractor.
2. The performance bond shall amount to 5% of the value of the contract.
3. If the award falls on a tender which contains an abnormally low price, the performance bond shall correspond to 10% of the value of the contract.
4. The bond must be presented by the private contractor at least five days before the signing of the contract.

5. The performance bond may take the form of a bank guarantee, insurance bond or letter of credit, which must be autonomous, irrevocable and at first request, or a cash deposit.
6. The term of the performance bond is 30 days after the end of the period of execution of the instalments and or of the validity of the contract.
7. The private contractor loses the right to return the performance bond when:
 - a) Does not fully comply with the contractual instalments for causes that are attributable to him/her;
 - b) The early termination of the contract occurs for reasons that can be imputable to him/her;
 - c) Does not renew the guarantee until 30 days before the end of the respective term.

Article 109 **Quality guarantee**

1. The quality deposit is intended to guarantee the interests of the public contractor against possible defects or shortcomings in the quality of goods, services or works.
2. The quality deposit corresponds to 5% of the contract value.
3. In case the adjudication falls on a proposal that contains an abnormally low price, the quality bond corresponds to 10% of the contract value.
4. The quality bond shall preferably take the form of retention of the price, and may also take the form of bank guarantee, insurance bond or letter of credit, which must be autonomous, irrevocable and at first request, or cash deposit.
5. Should it not take the form of retention of the price, the bond must be presented by the private contracting party at least 30 days before the end of the period of execution of the services and/or of the validity of the contract.
6. The term of the quality bond shall be defined in the contract and shall be of a minimum of three months and a maximum of one year, counting from the end of the period of execution of the services and/or duration of the contract, depending on the nature of the services that constitute the object of the contract.
7. The provision of the quality guarantee does not affect the responsibility of the private contractor to correct, at his own expenses, all defects of the goods, services or works that are identified until the end of the guarantee period, being understood as such, namely, any non-conformities between the services rendered and the terms of the contract.
8. If the identified defects cannot be corrected, the contractor can demand the repetition of one or more services, without additional costs, except if this proves to be impossible or constitutes abuse of right, under the general terms.

9. The provision of the quality guarantee does not replace other guarantees that the public contractor may enjoy under the terms of the law.
10. The private contractor loses the right to return the quality bond when it refuses to replace the goods, remedy the deficiencies, make the corrections or remedy the defects identified, without prejudice to other compensations and penalties provided by law.
11. The private contractor also loses the right to return the quality bond when it does not renew the bond within 30 days prior to the expiration of its term.

Article 110
Performance bond for advance payment

1. The purpose of the advance payment bond is to guarantee compliance by the private contractor with the service corresponding to the advance payment made by the public contractor.
2. The guarantee corresponds to 100% of the value of the advance payment made by the public contractor.
3. If more than one advance is made, a guarantee must be presented for each advance made, each of them of an equivalent value to that of the respective advance.
4. The guarantee must be presented by the private contracting party at least five days before the payment is made.
5. The deposit may take the form of a bank guarantee, insurance deposit or letter of credit, which must be autonomous, irrevocable and at first request.
6. The term of the guarantee is 30 days after the end of the execution period of the instalments and/or the term of the contract.
7. The private contractor loses the right to return the bond when:
 - a) Does not fully comply with the contractual instalments for causes that are attributable to him/her;
 - b) The early termination of the contract occurs for reasons that can be imputable to him/her;
 - c) Does not renew the bond up to 30 days before the end of its term.

Article 111
Return of the deposit

1. The bond shall be returned within 30 days of its expiry, if the private contractor has not forfeited the right to its return.

2. When the private contractor loses the right to return the bond, the public contractor shall notify him/her in writing of the non-return and the respective justification within a period of 30 days.

CHAPTER IV EXECUTION OF THE CONTRACT

Section I Start of the execution of the contract

Article 112 Invalidity of the contract

1. The contract whose celebration legally depends on an act, performed in the provisioning and contracting procedure, which has been judicially declared null is null.
2. The contract is also null:
 - a) Which does not have the legally required form;
 - b) Whose object or content is impossible;
 - c) Which has been entered into under physical or moral coercion;
 - d) Has been executed by alteration of the essential elements of the parts of the procedure.
3. The contract whose signing legally depends on an act, performed in the provisioning and contracting procedure, which has been annulled, without damage of its validation or the renewal of this act, can be annulled.
4. The contract contrary to the law is equally subject to annulment.
5. The annulment effect foreseen in the previous paragraphs can be removed by judicial decision when, considering the public and private interests in presence and the seriousness of the offense that generates the defect, the annulment of the contract proves to be disproportionate or contrary to good faith or when it is demonstrated that the defect does not imply the subjective modification of the contract nor an alteration of its essential content.
6. All contracts are susceptible of reduction and conversion under the terms of the Civil Code.
7. Invalidity of the contract obliges the parties to return to the other party whatever has been rendered or, if return is not possible, to return the corresponding amount.
8. The restitution of the corresponding value as provided for in the preceding number shall follow the regime of settlement and payment set forth in Article 115, with the due adaptations.

Article 113
Effectiveness of the contract

1. The full effectiveness of the contract occurs with the publication of the announcement of its conclusion in the Provisioning Portal, without damage of the same being dependent on other acts of approval, approval, publicity or others determined by law, without damage of the direct urgent adjustment foreseen in article 96.
2. The full effectiveness of the contracts that are legally subject to the prior supervision of the Chamber of Auditors is dependent on the issuance of the respective approval under the terms of the law.
3. The parties may give retroactive effect to the contract when justified by reasons of public interest, provided that the anticipated production of effects;
 - a) Is not prohibited by law;
 - b) Does not harm the legally protected rights and interests of third parties; and
 - c) Does not impede, restrict or distort competition guaranteed by the provisions of the present statute.
4. The regime of restitution of the value provided for in the previous article shall apply to the ineffective contract that has become effective.

Article 114
Suspension of the execution of the contract

1. The performance of the services that constitute the object of the contract may be totally or partially suspended;
 - a) By temporary impossibility to perform the contract, namely due to a delay of the public contracting party in delivering or making available the means or goods necessary for its performance; or
 - b) By exception of non-fulfilment.
2. The performance of the services which are the object of the contract shall resume as soon as the causes for the suspension cease to exist, and the party to whom the cause for the suspension of performance is attributable shall notify the other party in writing to that effect.
3. The suspension, total or partial, of the execution of the services object of the contract, determines the extension of the term of its execution for a period equal to the term initially established in the contract, plus the period necessary for the organisation of means and execution of preparatory or accessory works in order to resume execution, taking into account the needs of mobilisation of human and material resources and the duration of the suspension period.
4. The extension of the deadline provided for in the previous number must be formalised through the signing of an amendment to the contract.

Article 115
Settlement and payment

1. Settlement and payment shall take place under the terms provided for in the contract.
2. The private contractor must issue and send the invoice to the public contractor after the corresponding obligation is due and the performance of the service corresponding to the settled price.
3. The payments due by the public contractor must be made within a maximum period of 60 days after receipt of the respective invoices.

Article 116
Advance payments

1. The advance payments may only occur in exceptional situations, duly founded.
2. The advance payments must be expressly provided for in the contract, and the parties cannot, during the execution phase, agree to make advance payments that were not initially foreseen, except if there are grounds for modification of the contract that justify the change of the regime.

Article 117
Price revision

In contracts with a duration of more than one year, there may be a price revision for its total or partial update, if expressly provided for in the contract and if the contract establishes the respective terms, namely the calculation method and frequency.

Article 118
Early performance premiums

1. Except when their nature or the law does not allow it, works contracts may expressly provide for the award of prizes to the private contractor for early performance of the services object of the contract.
2. The awarding of the prizes provided for in the previous article may compensate the fulfilment of part or all of the services object of the contract in a shorter period of time than that foreseen in the parts of the procedure, when this is carried out by the private contractor without reducing the quality required and without increasing the price, and when this anticipation is in a relevant period of time and results in a clear and substantial benefit for the public contractor.
3. No premium may be established for early performance whose total value exceeds 10% of the value of the contract.

Section II
Supervision and monitoring of the contract

Article 119
Powers of the public contracting authority

1. The public contractor shall be responsible for:
 - a) Directing and supervising the way in which the contract is executed;
 - b) Modify the clauses regarding the content and the method of execution of the contractual services, for reasons of public interest, with the limits established by law or by the contract;
 - c) Unilaterally terminate the contract within the limits provided for by law and in the contract.

Article 120
Exercise of management and supervision powers

1. The public contractor shall be responsible for ensuring, through the exercise of managerial and supervisory powers, that the contract is performed with full respect for the public interest.
2. The exercise of managerial and supervisory powers shall safeguard the autonomy of the private contractor, being limited to what is necessary for the pursuit of the public interest, in compliance with the applicable legal or contractual rules and without diminishing the initiative and responsibility of the private contractor.
3. The public contractor must refrain, through the exercise of managerial and supervisory powers, from diminishing the responsibility and degree of risk assumed by the private contractor in the performance of the contract.

Article 121
Direction and supervision of the performance of the contract

1. Powers of direction over the manner of performance of the contract shall relate to the technical, financial or legal areas of performance of services, in order to fill any regulatory gaps or to densify the manner of performance, and shall be exercised, in particular, through the issuance of orders, directives or instructions to the private contractor.
2. Direction acts shall be issued in writing or, when circumstances require the oral form, reduced to writing and notified to the private contractor within five days.
3. Powers of supervision over the manner in which the contract is executed shall consist of supervision of the technical, financial and legal aspects of the manner in which the services are provided, including the possibility of requiring corrective action and shall be exercised, in particular, by inspection of premises, equipment, documentation, computer records and accounts or by requests for information, without prejudice to

the provisions of professional or commercial secrecy or other information protected by law.

4. The public contractor may delegate the execution of the inspection tasks to public or private entities, applying, with the necessary adaptations, the rules about delegation of competencies contained in the administrative law.
5. The acts of inspection shall be compulsorily recorded, in the form of records, which shall be dated and signed by the public contractor or by the entity to whom the public contractor has delegated this power of inspection.

Article 122

Nature of the declarations of the public contractor

The declarations of the public contractor about the execution of the contract, which translate into:

- a) Orders, directives or instructions in the exercise of the powers of direction and supervision;
- b) Unilateral alteration of the clauses regarding the content and the way of execution of the services foreseen in the contract for reasons of public interest;
- c) Application of the penalties provided for breach of contract;
- d) Unilateral termination of the contract;
- e) Assignment of the contractual position of the private contracting party to a third party.

Section III

Contractual amendments

Article 123

Amendment of the Contract

1. The contract may be amended:
 - a) By agreement between the parties with the same form of the original contract;
 - b) By administrative act of the public contracting party;
 - c) by judicial or arbitral decision.
2. The amendment of the contract may be based, namely, on:
 - a) The conditions provided for in the contract itself or in the present diploma;
 - b) A supervening and unforeseen alteration of the circumstances in which the parties based their decision to contract, as a result of which the demand for the fulfillment of the obligations assumed starts to seriously affect the principle of good faith and is not covered by the risks inherent to the contract;

- c) Reasons of public interest arising from new needs or from a new consideration of the existing circumstances.
- 3. The amendment of the contract is subject to the following limits:
 - a) It may not lead to a substantial alteration of the object of the contract;
 - b) It cannot configure a form of impediment, restriction or distortion of competition;
 - c) It cannot lead to the introduction of amendments that, if they were part of the documents of the procedure, would have resulted in the alteration of the order of the evaluated proposals or the admission of other proposals;
 - d) It cannot result in an increase of the value of the contract in excess of 30%;
 - e) It cannot alter the economic balance of the contract in favor of one of the parties in terms of the latter being in a more favorable situation than that resulting from the balance initially established.
- 4. The changes that exceed the limits foreseen in the previous number must, if necessary, be object of a new provisioning procedure.

Section IV

Restoring the financial balance of the contract

Article 124

Restoring the financial balance of the contract

- 1. The financial balance of the contract shall be restored only in those cases especially provided for by law or in the contract itself, when, taking into account the distribution of risk between the parties, the assumptions on which the private contractor determined the value of the services he was obliged to perform change, provided that the public contractor knew or should not have been unaware of those assumptions, namely as a result of;
 - a) a supervening and unforeseen change in the circumstances on which the parties based the decision to contract attributable to a decision by the public contractor, taken outside the exercise of its powers to shape the contractual relationship, which has specific repercussions on the contractual situation of the private contractor; or
 - b) Reasons of public interest.
- 2. The restoration of the financial balance produces its effects as of the date of the alteration of the assumptions referred to in the previous number, being carried out, in the absence of contractual stipulation, namely through the extension of the deadline for the execution of the services and or for the duration of the contract, the revision of prices or the assumption, by the public contractor, of the duty to pay the value corresponding to the increase of the expenses foreseen with the execution of the contract.
- 3. The restoration of the financial balance made pursuant to this article is, in relation to the event that gave rise to it, unique, complete and final for the entire term of the contract,

without prejudice to the fact that such restoration may be partially deferred in relation to any specific effects of the event in question which, by their nature, are not susceptible of a reasonable immediate evaluation or about whose existence, incidence or quantification there is no agreement between the parties.

4. In the absence of a contractual stipulation, the value of the restoration of the financial balance shall correspond to what is necessary to restore the financial proportion on which the contract was originally based and shall be calculated in accordance with the value of the benefits to which the parties were obliged and the effects resulting from the event giving rise to the right of restoration on the value of those benefits.
5. The restoration of the financial balance may not place either party in a more favourable situation than that resulting from the financial balance initially established and may not cover any losses that already arose from that balance or were inherent to the risk inherent in the contract.

Section V

Assignment of the Contractual Position

Article 125

Assignment of the contractual position by the private contracting party

1. The assignment of the contractual position occurs automatically whenever there is a universal or partial transfer of the private contractor's position, as a result of a corporate restructuring, namely by acquisition or merger in favour of an assignee, provided that the assignee meets the minimum requirements of qualification and skills required from the private contractor.
2. The public contractor may also accept, on an exceptional basis, the assignment of the private contractor's position in favour of another natural or legal person or grouping, when this has been requested by the private contractor on the grounds of impossibility to perform the contract for unforeseeable, inevitable and irresolvable reasons and is not expressly prohibited by the contract nor contrary to the nature of the contract.
3. The authorization for the assignment of the contractual position depends on:
 - a) The prior presentation of the qualification documents concerning the potential assignee that are required of the assignor at the formation stage of the contract in question;
 - b) The fulfillment, by the potential assignee, of the minimum qualification requisites required of the assignor in the formation phase of the contract in question;
 - c) The provision by the transferee of the guarantees required of the transferor.

4. The assignment of the contractual position may not occur when there are strong indications that it is the result of acts, agreements, practices or information likely to distort the competition rules.
5. The assignment of the contractual position may also occur when the contract provides that the private contractor assigns its contractual position, in case of non-performance, to a competitor ranked in a subsequent position, to be indicated by the public contractor.
6. In the cases foreseen in the previous number, the public contractor sequentially questions the competitors that participated in the provisioning procedure, according to the respective final ordination, to ascertain the acceptance of the assignment of the contractual position.
7. In the cases in which the assignment of the contractual position depends on an authorization, the private contractor notifies the public contractor of his intention to assign his contractual position, presenting a justified proposal and instructed with the documental proof of the verification of the exigible requisites under the terms of the law.
8. The public contractor shall notify the private contractor, within 10 days, of its decision on the authorisation for the assignment of the contract position.
9. The assignment is made to the entity for which there is an agreement between the public contractor and the private contractor or, in the absence of an agreement, to the entity indicated by the public contractor.
10. The assignment of the contractual position at the request of the private contractor takes the same form as the original contract, while the assignment as a result of non-performance occurs by mere act of the public contractor from the date indicated by the latter.
11. The rights and obligations of the private contractor, provided that they arose prior to the date of notification of the act referred to in the preceding number, are automatically transferred to the transferee on the effective date of that act.
12. The contractual position of the private contractor in subcontracts signed by him or her is automatically transferred to the transferee, except in the case of refusal by the transferee.
13. The guarantees provided by the initial private contractor are subject to reduction in proportion to the value of the services actually performed and released after expiry of the respective periods, the date of assignment being considered the date of termination of the contractual relationship.
14. The assignment of the contractual position of the private contractor may not result in increased costs or the loss or reduction of guarantees for the public contractor.

Article 126

Assignment of the contractual position by the public contractor

The assignment of the contractual position by the public contractor may not be refused by the private contractor, except when there is a justified fear that the assignment involves an increased risk of non-performance of the obligations arising from the contract by the potential assignee or a decrease in the guarantees of the private contractor.

Section VI

Subcontracting

Article 127

Subcontracting

1. The private contractor may subcontract to another entity for the performance of the contractual services, whenever this is not expressly forbidden by the contract and does not result in additional costs for the public contractor nor in an objective increase in the risk of non-fulfilment of the contractual obligations.
2. The subcontracting depends on the authorisation of the public contractor, except when it is stated in the terms of the proposal submitted by the private contractor and has been provided for in the contract.
3. In the case provided for in paragraph 1, the private contractor shall notify the public contractor of his intention to subcontract by submitting a reasoned proposal accompanied by the documents proving that the requisite requirements have been met.
4. For the purposes of the previous paragraph, the public contractor shall notify the private contractor, within 10 days, of its decision on the authorisation to subcontract.
5. In the contracts whose present diploma requires the reduction to writing, the subcontract must also be reduced to writing and its clauses must contain, under penalty of nullity, the following elements:
 - a) The identification of the parties and of their representatives, as well as the title on which they intervene;
 - b) The description of the subject of the sub-contract and contractual benefits;
 - c) The value and the contract price or prices or the form of its determination;
 - d) (d) the form and term of payment;
 - e) The term for performing the services and or for the duration of the contract.
6. The private contractor must, within five days after the conclusion of each subcontract, notify the public contractor in writing, sending him/her a copy of the contract in question.

7. The provisions of the previous paragraphs also apply to subcontracts concluded between the subcontractor and third parties.
8. The private contractor shall be liable to the public contractor for all the services contracted for as if they were his own acts, regardless of what he has subcontracted to third parties.
9. The contract may prohibit the subcontracting of certain contractual services or services whose aggregate value exceeds a certain percentage of the contract value.

Section VII

Breach of contract

Article 128

Non-performance for reasons attributable to the private contractor:

1. If the private contractor does not perform his or her obligations in an exact, timely and complete manner for reasons attributable to him or her, the public contractor shall notify him or her, setting an appropriate deadline for compliance, unless he or she has objectively lost interest in the service.
2. If the situation of non-fulfilment continues after recourse to the deadline referred to in the previous number, the public contracting party may terminate the contract on the basis of definitive non-fulfilment, under the terms of this law.
3. The provisions of the preceding paragraphs do not prevent the application by the public contractor of sanctions provided for in the contract in case of non-fulfilment by the private contractor, for reasons attributable to him or her, nor the application of the provisions relating to the obligation of compensation for delay and definitive non-fulfilment provided for in the Civil Code or the execution of the guarantee provided.

Article 129

Late payments 1.

1. In the event of delay by the public contractor in the performance of its pecuniary obligations, the private contractor shall be entitled to interest on arrears on the amount due at the rate legally prescribed for that purpose for the period corresponding to the delay.
2. The legal rate of interest for late payment due under the terms of the preceding subsection shall be fixed by a ministerial decree of the member of the Government responsible for the area of finance.
3. A delay in one or more payments shall not cause the remaining payment obligations to fall due.

Article 130

Exception of non-compliance by the private contractor

1. When non-performance is attributable to the public contractor, the private contractor, irrespective of the right to terminate the contract, may invoke the exception of non-performance, provided that its refusal to perform does not imply serious prejudice to the achievement of the public interest, except if the performance of the contractual obligations would manifestly jeopardise the economic and financial viability of the private contractor or prove to be excessively burdensome.
2. The invocation of the exception of non-compliance by the private contractor depends on the prior notification to the public contractor of the intention to exercise such right and the respective grounds, with a minimum prior notice of 60 days, if no other term is provided for in the contract.
3. When the invocation of the exception of non-fulfilment is due to a delay by the public contractor in fulfilling its monetary obligations, the advance period provided for in the previous number shall be counted as of the end of the payment term provided for in article 115, number 3.

Article 131

Application of contractual penalties for damages

1. The Public Contractor may, by an act of contract, terminate the contract and apply the sanctions provided for therein, without prejudice to the application of the provisions relating to the obligation of compensation for delay and definitive non-performance provided for in the Civil Code.
2. Where the penalties referred to in the preceding paragraph are of a pecuniary nature, the respective value may not exceed 20% of the value of the contract.
3. The declaration of loss of any contractual guarantee and its recovery shall not prejudice the right of the contractor to claim the payment of penalties and compensation for damages that are enforceable under the terms of the contract or the law.

CHAPTER V

TERMINATION OF CONTRACTS

Article 132

Termination of the contract

The following are causes of termination of the contract:

- a) The definitive breach of the contract;
- b) The definitive impossibility of compliance and the remaining causes of termination of obligations provided for by law;
- c) Revocation;

- d) Termination by the parties or by judicial or arbitral decision.

Article 133

Final performance of the contract

1. The final fulfillment of the contract occurs with the final acceptance of the good, service or work by the public contracting party and the payment.
2. Where the good, service or work is composed of several parts whose delivery occurs at different times, the final acceptance of each of them only occurs after the delivery of the part that occurs last.

Article 134

Acceptance

1. The final acceptance of the good, service or work by the public contractor must be preceded by its verification in order to determine if it is in the agreed conditions and free of defects.
2. The verification is performed by the public contractor.
3. The public contractor may delegate the performance of such verification tasks to public or private entities, applying, with the necessary adaptations, the rules about delegation of competencies contained in the administrative law.
4. In the case of works contracts, when the public contractor is covered by the scope of action of the National Development Agency, I.P., the verification shall be performed in a procedural conference by the public contractor together with the National Development Agency, I.P.
5. The verification must be done within the agreed deadline or, in the absence of an agreement, within 60 days after receiving the goods, service or work.
6. Without prejudice to the provisions of the previous number, in the case of contracts for the execution of works, the public contractor may justifiably, taking into account their complexity, benefit from a verification period longer than 60 days, by notifying the private contractor of the extension of the period.
7. The result of the verification must be communicated to the private contractor.
8. The absence of the verification, of the notification of the extension of time or of the communication within the time limit means that the good, service or work is accepted.

Article 135
Guarantee of the good, service or work

1. Without prejudice to the general regime, if more favourable, the goods, services or works enjoy a guarantee for non-acceptable or non-apparent defects;
 - a) For one year in respect of goods acquired or leased and services provided;
 - b) For five years, in relation to works carried out, in relation to defects concerning non-structural construction elements or technical installations;
 - c) For ten years, in relation to works performed, for defects related to structural construction elements.
2. During the guarantee period, the public contractor may demand, at no cost, the correction of the defects or, if they cannot be corrected, the delivery of a new good, the provision of a new service or the execution of a new work, except if this proves to be impossible or constitutes abuse of right, under the general terms.
3. In the case of delivery of new goods, provision of new services or execution of new works, the new goods, services or works shall also be guaranteed against non-acceptable or hidden defects for the periods provided for in paragraph 1.
4. Performance of the guarantee provided for in this Article shall not exclude the right to compensation under the general terms.

Article 136
Revocation of the contract by mutual agreement

The parties may, by mutual agreement, revoke the contract at any time, the effects of which shall be those fixed in the terms of the agreement.

Article 137
Termination of the contract at the initiative of the private contracting party

1. Without prejudice to other situations of serious breach of the obligations assumed by the public contractor, as provided for in the contract, and regardless of the right to compensation, the private contractor has the right to terminate the contract in the following situations:
 - a) Abnormal and unforeseeable change in the circumstances on which the private contractor based its decision to contract;
 - b) Definitive breach of the contract due to an act attributable to the public contractor;
 - c) Non-fulfilment of financial obligations by the public contractor for a period exceeding six months;

- d) Non-compliance of the public contracting party with judicial or arbitration decisions, which have become *res judicata*, regarding the contract.
- 2. In the case provided for in subparagraph a) of the previous number, the private contractor may only terminate the contract when:
 - a) there is no serious prejudice to the achievement of the public interest underlying the contractual relationship; or
 - b) Where there is damage to the achievement of the public interest underlying the contractual relationship, the maintenance of the contract puts into question the economic and financial viability of the private contracting party or proves to be excessively onerous.
- 3. The right of termination is exercised by judicial or arbitral means or by notification to the public contracting party, which becomes effective 30 days after its reception, except if during this period the public contracting party ceases the non-compliance.

Article 138

Termination of the contract at the initiative of the public contractor

- 1. Without prejudice to other situations of serious breach of the obligations assumed by the private contractor provided for in the contract, the public contractor may terminate the contract in the following cases:
 - a) Abnormal and unforeseeable change in the circumstances on which the public contractor based its decision to contract;
 - b) Reasons of public interest;
 - c) Definitive non-performance of the contract due to an event attributable to the private contractor;
 - d) Systematic and repeated non-compliance, by the private contractor, of orders, directives or instructions transmitted in the exercise of the power of management and supervision by the public contractor, in matters relative to the execution of the contractual services;
 - e) The assignment of the contractual position or subcontracting carried out in disregard of the terms and limits established by law or in the contract or without the authorization of the public contractor, when such is necessary;
 - f) The accumulated value of the contractual penalties of a pecuniary nature exceeds 10% of the value of the contract;
 - g) The non-compliance of the contracting party with judicial or arbitration decisions, which have become final and unappealable, regarding the contract;

- h) The private contracting party proposes or is proposed for insolvency or this is declared by the court.
- 2. The provision of the previous number does not prejudice the right of indemnity under the general terms.
- 3. The causes of termination provided for in subparagraphs c) to h) of subsection 1 have a sanctioning nature.
- 4. In the cases of penalty cancellation, if the private contractor is liable, the respective amount shall be deducted from the amounts due, without prejudice to the possibility for the public contractor to execute the guarantees provided by the private contractor.
- 5. When termination of the contract occurs for public interest or due to an abnormal and unforeseeable change of circumstances attributable to a decision of the public contracting party taken outside the exercise of its powers to conform the contractual relationship, the private contractor may be paid compensation corresponding to the damages and loss of profits.

CHAPTER VI WORKS CONTRACT

Section I General provisions

Article 139 Parties

In a works contract, the public contractor is called the owner and the private contractor the contractor.

- 1. During the execution of the contract, the owner is represented by the construction supervisor and the contractor by a construction manager, except in those matters where, by law or by contractual stipulation, a different mechanism of representation is established.
- 2. The construction supervisor shall ensure the permanent supervision of the construction work, personally or through a substitute.
- 3. Without prejudice to other limitations provided for in the contract, the construction supervisor has no power to represent the owner of the work in matters of amendment, termination or revocation of the contract.
- 4. In the absence of contractual provisions, during periods in which they are absent or indisposed, the supervising director of the work and the construction supervisor shall be replaced by the persons that they indicate for that purpose, provided that, in the case of the supervising director of the work, the designation of the substitute is accepted by the owner of the work and communicated to the contractor.

Article 140
Construction records

1. Where determined by law or by the will of the parties, the acts concerning the work that must be formalised are reduced to writing in the form of a record.
2. The record is signed by the parties' representatives and a duplicate given to the contractor.
3. The contractor is entitled to make claims or reservations concerning the contents of the record.
4. Claims or reservations may be made in the report itself or within 10 days of its notification to the contractor.
5. Claims or reservations in the record itself may be limited to a generic statement of the respective object, in which case the contractor may present a reasoned written submission within 10 days.
6. The construction owner shall decide on the claim or issue a decision on the reservations presented and shall notify the contractor within 15 days from the date on which the report was signed or the claim or written statement referred to in the previous number was delivered.
7. If the contractor refuses to sign the report, it shall mention that fact and the reason for the refusal, and the owner's representative shall promote the signature of the report by two witnesses that confirm the occurrence.
8. If, without justification under the terms of this law and due to a fact that is imputable to the construction owner, the construction owner does not formalise in the record any act that is subject to this formality, such omission cannot be enforced against the contractor.

Article 141
The Work Book

1. The owner of the works shall be provided with a site book, to be kept at the place of execution of the work and intended to record in chronological order all relevant facts concerning the execution of the work, namely compliance or non-compliance with the work plan, requests by the contractor and directives issued.
2. The construction site book shall consist of:
 - a) Opening statement;
 - b) Part for the chronological record of all relevant facts concerning the execution of the work;
 - c) Part for recording the main characteristics of the work and the constructive solutions adopted with an impact on its quality and functionality;
 - d) Closing term.

3. The construction book shall include a copy of all the construction records that are drawn up.
4. After completion of the work, the construction book shall be filed under the terms laid down in Article 19.

Section II
Rights and duties of the parties

Article 142
Obligations of the contractor

The contractor shall:

- a) maintain good order on the site of the work, removing from the site of the work, on its own initiative or at the request of the owner of the work, personnel who have behaved in a manner disruptive to the work, in particular by being less than proper in the performance of their duties, by indiscipline or by failing to respect the representatives or agents of the owner of the work or the representatives or agents of the contractor, subcontractors or third parties;
- b) Display visibly at the work site the identification of the work, the owner and the contractor;
- c) Make available and supply all means necessary for the execution of the work and the preparatory or accessory works, including, namely, materials and human, technical and equipment resources, unless the contract provides otherwise;
- d) carry out all works which, by nature, by legal requirement or according to common usage, are considered as preparatory or accessory to the execution of the work, unless the contract provides otherwise, namely:
 - i. Site erection, construction, maintenance, dismantling and demolition works;
 - ii. Works necessary to ensure the safety of all persons working on the site or circulating on the site, including subcontractors' personnel and third parties in general, to avoid damage to neighbouring buildings and in compliance with the law;
 - iii. Works for the re-establishment, by means of temporary works, of all easements and rights of way which must be altered or destroyed for the execution of the works and to avoid the stagnation of water which such works may cause;
 - iv. construction works for access to the worksite and internal services.

Article 143
Obligations of the main contractor

1. The developer shall:
 - a) Promote the administrative procedures for carrying out any expropriation that may be necessary for the execution of the work, as well as for the constitution of easements and for the occupation of buildings necessary for the execution of the work;
 - b) Pay the compensation due for expropriation, creation of easements and occupation of buildings;
 - c) Be in administrative possession of all the land to be expropriated or, when the number of properties to be expropriated and the deadline for carrying out the work make this obligation disproportionate, be in administrative possession of the properties needed to begin work before the contract is signed, without prejudice to the necessary adjustments to the execution project when the contractor has the obligation to prepare the execution project;
 - d) to establish the easements necessary for the execution of preparatory or accessory works and for the commencement of the execution of the work prior to the conclusion of the contract, without prejudice to necessary adjustments to the execution project when the contractor is under an obligation to prepare the execution project;
 - e) Give the contractor, within a period not exceeding 90 days after the date of signature of the contract, total or partial access to the site where the works are to be executed and provide him/her with the elements that, under contractual terms, are necessary for the beginning of the works, without prejudice to the justified extension of the deadline.
2. The owner of the works shall notify the contractor to appear at the act of formalising access to the site where the works are to be executed at least 10 days in advance, and a record of the formalisation shall be drawn up containing the contractor's acceptance thereof.

Section III
Execution of Works

Article 144
Work Plan

1. The work schedule is intended, in accordance with the project of execution of the work, to fix the sequence and the partial deadlines for execution of each type of work envisaged and to specify the means with which the contractor proposes to execute them, as well as to define the corresponding payment plan.

2. In the case where the contractor is under a contractual obligation to prepare the project of execution, the work schedule shall include the services of conception under the responsibility of the contractor.
3. The schedule of works contained in the contract may be adjusted by the contractor to the conditions of access to the site of execution of the works, as well as in the case of extension of the deadline for execution and of detection of errors and omissions during the execution phase or when additional works are to be carried out.
4. The adjustments referred to in the previous number cannot imply the alteration of the contractual value, the deadline for execution of the work or the partial deadlines defined in the plan of work in the contract, beyond what is strictly necessary for the adaptation of the plan of work.
5. The adjusted work schedule must be approved by the owner within 20 days of notification by the contractor. Silence is equivalent to acceptance if the adjustments do not imply alteration of the contract value, or to rejection if they imply alteration of the contract value.
6. The procedure for adjustment of the work schedule must be completed within 10 days of total access to the site or each partial access.
7. The client cannot proceed with the partial acceptance of the work plan.

Article 145

Period of execution of the work and design services

1. The period of execution of the works begins from the date on which total or partial access to the site where the works are to be executed was granted.
2. In cases in which the contractor has the obligation to prepare the execution project, the contract may establish deadlines for preparation and delivery of the relevant project elements with final term prior to the date on which total or partial access to the site where the works are to be executed must be provided.
3. In the case of the provisions of the previous number, the contract must establish maximum time limits for the client to give its opinion about the project elements delivered by the contractor so that the execution of the works is not prejudiced by delays in the client's assessment of such project elements.
4. In the absence of a contractual stipulation, the period of execution of the work referred to in paragraph 1 is understood to include the design phase, whatever its content.

Article 146
Commencement of work

1. The execution of the work shall begin on the date on which the period for the execution of the work begins to run.
2. Without prejudice to the provisions relating to the design phase in contracts where the contractor is obliged to prepare the execution project, the construction owner may only consent to the commencement of work on a date earlier or later than that defined in the preceding paragraph if justifiable circumstances occur.

Article 147
Construction site

1. The contractor shall establish a construction site, where all materials, tools and machinery to be used in the construction work shall be delivered.
2. Materials entering the building site shall be subject to a material control by the owner, with the cooperation of the contractor, to verify their quality and conformity by reference to the description in the specifications.
3. A record shall be drawn up of the verification of the quality and conformity of the materials provided for in the previous paragraph.

Article 148
Findings

1. All finds corresponding to items of historical, paleontological, archaeological, architectural, linguistic, documentary, artistic, ethnographic, scientific, social, industrial or technical value found during the execution of the work shall be delivered by the contractor to the owner of the work, accompanied by a record specifically mentioning the object of the delivery.
2. In the case of movable assets whose extraction or dismantling involves specialised work, knowledge or processes, the contractor shall report the discovery to the owner of the work and, if necessary, suspend the execution of the work until he receives instructions on how to proceed.
3. The construction owner is obliged to report all findings referred to in the previous paragraphs to the competent administrative authorities.
4. In case human remains are detected, the contractor must immediately report the fact to the competent police authorities, informing the construction owner.

Section IV
Suspension of work

Article 149
Suspension by the construction owner

Without prejudice to the general grounds for suspension provided for in the present document and others provided for in the contract, the construction owner may order the suspension of the execution of the works in the following cases:

- a) Lack of safety conditions;
- b) Verification of the need to study alterations to the project;
- c) Binding determination or recommendation deemed relevant from any competent administrative authorities.

Article 150
Suspension by the contractor

- 1. In contracts that provide for a period of execution of the work equal to or greater than one year, the contractor may suspend, once each year, in whole or in part, the execution of the work for a period not exceeding 10 consecutive days, provided that the owner of the work does not expressly object and that the partial deadlines and the final deadline for execution of the work are not compromised.
- 2. The contractor shall be responsible for any additional costs resulting from the suspension provided for in the previous number.
- 3. Besides the general grounds for suspension provided for in this document and others provided for in the contract, the contractor may suspend, wholly or in part, the execution of the work in the following cases;
 - a) Lack of safety conditions;
 - b) invocation of an exception of non-compliance, under the terms of Article 130.
- 4. Suspension by the contractor must be preceded by written communication to the owner of the work, immediately after the occurrence of the event which justifies it, with express mention of the grounds invoked and the facts which materialise it.
- 5. When the urgency or the need for immediate suspension is incompatible with the requirement of prior written communication, the communications referred to in the previous numbers may be made orally, and the contractor must formalise them in writing within five subsequent days.

6. The contractor may also suspend the execution of the works, with the prior authorisation of the construction owner, if this does not compromise the final completion of the work and does not imply the assumption of new costs by the construction owner.

Article 151

Notice of Suspension

The suspension is always formalised in a record, the content of which must at least include the assumptions that determined it and the general terms of the procedure to be followed subsequently, if it is possible to determine them, as well as any claims or reservations presented by any of the parties, provided that they are directly related to the suspension.

Section V

Objective changes

Article 152

Further work

1. Complementary works are those whose kind or quantity is not provided for in the contract.
2. The owner of the work may order the execution of supplementary works to the contractor provided that, cumulatively:
 - a) They cannot be technically or economically separable from the object of the contract without serious inconvenience or without resulting in a considerable increase in costs for the owner of the work;
 - b) Its necessity should not have been known by the construction owner at the time of the conclusion of the contract;
 - c) The price of such works, including that of previous complementary works, does not exceed 30% of the contractual price.
3. The complementary works that exceed the limit foreseen in paragraph c) of the previous number must be adjudicated following a new provisioning procedure.

Article 153

Obligation of performance of complementary works

1. The contractor has the obligation to perform the complementary works, as long as it is ordered in writing by the construction owner and the changes to the elements of the solution of the work necessary for its execution are handed to him, when they were part of the specifications relative to the procedure of formation of the contract.

2. The contractor shall not be subject to the obligation provided for in the previous subsection when he or she chooses to exercise the right to terminate the contract or when, being the complementary works of a different type from those provided for in the contract or of the same type as others provided for therein but to be performed under different conditions, the contractor does not have the human or technical means indispensable for their execution.
3. When the contractor does not begin to perform the works, the owner of the work may, without prejudice to the power to terminate the contract:
 - a) impose on the contractor a penalty payment, for each day of delay, in an amount corresponding to 0.05% of the contract value, without prejudice to the possibility that the contract may provide for a higher value; or
 - b) Opt for the execution of the complementary works, directly or through a third party.

Article 154

Price and deadline for performance of additional works

1. In the absence of contractual stipulation, the price to be paid for the complementary works and the respective execution period are fixed in the following terms:
 - a) In the case of works of the same kind as other works provided for in the contract and to be executed under similar conditions, the contractual price and the partial execution periods provided for in the work plan for that kind of work shall apply;
 - b) In the case of works of a different type or of the same type as other works provided for in the contract but to be executed under different conditions, the contractor must submit a proposal for price and deadline for execution, within 10 days from the date of receipt of the order for their execution.
2. The owner has 20 days in which to comment on the contractor's proposal, and may, if it is not accepted, submit a counterproposal.
3. If the owner does not notify the contractor within the time limit provided for in the preceding paragraph, the contractor's proposal shall be deemed not to have been accepted.
4. When additional works are to be carried out, the period of execution of the work is proportionally extended in accordance with the periods defined under the terms of the previous article, except when additional works are involved whose execution does not prejudice the normal development of the work plan.

Article 155
Formalisation of additional work

Once all the terms and conditions for the performance of complementary work have been defined, the developer and the contractor must formalise them in writing, with a contract amendment being obligatory in cases where the performance of complementary work implies an increase in the value of the contract or an extension of the period for the execution of the work.

Article 156
Responsibility for additional work

1. The main contractor shall be liable to pay for the additional work that he orders the contractor to carry out.
2. When the contractor is under an obligation to prepare the execution project, it is responsible for the complementary works that have the purpose of correcting the respective errors and omissions, except when these are induced by the elements prepared or made available by the owner.
3. The contractor must, within 60 days from the date on which total or partial access was given to the site where the work is to be carried out, complain about the existence of errors or omissions in the specifications, except those that are only detectable during the execution of the work, under penalty of being responsible for bearing half the value of the complementary work to correct those errors and omissions.
4. The contractor is also responsible for additional work intended to correct errors and omissions that, not being objectively detectable during the contract formation phase, were not identified by the contractor within 30 days from the date on which they were required to be detected.
5. Without prejudice to the provisions in the previous paragraphs, if the errors or omissions result from non-compliance with design obligations assumed by third parties towards the construction owner:
 - a) The construction owner must compulsorily exercise its right to be compensated by these third parties;
 - b) (b) the contractor shall be subrogated in the right of the developer to be indemnified by the third party up to the amount to be borne by the developer by virtue of the provisions of paragraphs 3 and 4.

Article 157
Less work

1. Except in the case of impossibility of performance, the contractor may only fail to perform any works provided for in the contract if the main contractor issues an order to that effect, specifying the missing works.
2. The price corresponding to the missing works shall be deducted from the contract price, without prejudice to Article 159.

Article 158
Non-utilisation of work already carried out

If the performance of additional work or substandard work results in the destruction of work already performed in accordance with the contract or the instructions of the construction owner, the value thereof shall not be deducted from the contract price, and the contractor shall be entitled to remuneration for the work already performed and for the work necessary to restore the previous situation.

Article 159
Compensation for reduction of the contract price

1. When, due to the order to cancel work or other acts or facts attributable to the construction owner, the value of the work performed by the contractor is more than 20% below the contract price, the contractor shall be entitled to compensation corresponding to 10% of the amount of the difference.
2. The compensation provided for in the previous paragraph is paid in the final account of the work.

Section VI
Measuring

Article 160
Measuring

1. The construction owner shall measure all work performed, including any work not foreseen in the project or not duly ordered by the construction owner.
2. In the absence of contractual stipulation, measurement is performed on a monthly basis, and must be completed by the 10th day of the month immediately following the month to which it refers.
3. Measurements shall be made at the construction site with the collaboration of the contractor and shall be formalised in a record.
4. The methods and criteria to be adopted for carrying out measurements shall be defined in the contract.

Article 161
Status of work

1. Once the measurement is done, the respective current account shall be drawn up within 10 days, specifying the quantities of work determined, the respective unit prices, the total credited, the discounts to be made, the advances granted to the contractor and the balance to be paid to the contractor.
2. The current account and the other documents constituting the status of the work shall be verified and signed by the contractor, and a duplicate shall remain in his possession.
3. When the contractor considers that there is an error in any of the documents referred to in the previous subsection, he shall present the corresponding reservation at the moment of signature, and the provisions of Article 140 shall apply.
4. If, before the completion of the work, errors or faults are detected in any previously drawn up report of measurement, the correction shall be made in the immediately subsequent report of measurement by the owner of the work if the latter and the contractor agree in relation to the object and quantities to be corrected, the correction of the measurement being reflected in the current account drawn up in the following month.

Article 162
Provisional statement of work

1. When it is impossible to carry out measurement or when the main contractor for any reason ceases to carry it out, the contractor shall submit, before the end of the following month, a statement of the quantities of work done during the month in question, together with the respective documents.
2. The statement submitted in accordance with the preceding paragraph shall be considered the provisional statement of work.
3. The accuracy of the quantities entered in the maps submitted under the terms of the previous paragraphs shall be verified in the first measurement report following their submission, in which the developer makes any corrections that may be necessary, or, if the work is completed, in a separate measurement report, to be drawn up before provisional acceptance.

Section VII
Provisional and Definitive Reception

Article 163
Inspection

1. The provisional acceptance of the work depends on the inspection, which must be performed as soon as the work is fully or partially completed, at the contractor's request or at the initiative of the construction owner, taking into account the end of the total deadline or partial deadlines for execution of the work.
2. The inspection is made by the owner of the work, with the cooperation of the contractor, and its purpose, in relation to the work to be received, is namely
 - a) Verify that all the contractor's contractual and legal obligations are fully and perfectly fulfilled;
 - b) To certify the correct execution of the plan for the prevention and management of construction and demolition waste, under the terms agreed between the parties and the applicable legislation.
3. When the construction site is covered by the scope of action of the National Development Agency, I.P., the inspection is performed in a procedural conference by the construction site owner together with the National Development Agency, I.P..
4. The construction owner shall summon the contractor in writing to the inspection at least five days in advance and, in case the contractor fails to attend or justify the absence, the inspection shall take place with the intervention of two witnesses, who shall also sign the respective record.
5. In the case referred to in the previous number, the record is immediately notified to the contractor for the purposes set forth in the following articles.
6. When the inspection is requested by the contractor, the construction owner shall conduct it within 30 days from the date of receipt of the said request, convening the contractor under the terms of subsection 4.
7. Failure by the owner to schedule or conduct the inspection on time and without a justified reason shall constitute a default under the terms of the Civil Code.

Article 164
Report of Inspection and Provisional Reception

1. The inspection record is drawn up, signed by the intervening parties, who must declare whether the construction work is, in whole or in part, in conditions to be received.

2. The report referred to in the previous subsection shall contain information about:
 - a) How the contractor's contractual and legal obligations have been met, identifying, namely, the defects of the work;
 - b) Any conditions that the construction owner considers necessary to impose, under the terms of the law, as well as the deadline for their compliance.
3. Whenever the contractual stipulation that includes a partial provisional contractual provision so long as the construction work is wholly or partially ready for acceptance, the signing of the record authorises, wholly or partially, the opening of the construction work for public use or its entry into operation and implies, where appropriate, the transfer of possession to the construction owner, without prejudice to the contractor's guarantee obligations.
4. In the case of defects in the construction work that prevent, in whole or in part, provisional acceptance of the work, the specification of such defects in the report, under the terms of paragraph 2(a), shall be added to the declaration of non-acceptance of the work or the part thereof that is not fit for acceptance and the respective grounds.
5. If the construction owner refuses to sign the deed, the construction work is not received in whole or in part.
6. Unjustified refusal by the developer to sign the report after the inspection constitutes default under the terms of the Civil Code.

Article 165 **Defects in the Construction**

1. The report that declares the non-acceptance of the work, in whole or in part, due to defects in the work detected during the inspection is notified to the contractor, who is given a reasonable deadline to correct them.
2. The time limit set for the correction of defects in the construction work that is necessary after the inspection has been performed shall not begin to run before the expiry of the time limit for the contractor to present claims or reservations, or before the decision of the owner concerning them.
3. If the ordered defect correction is not carried out within the deadline set, the developer may choose to carry out such work, directly or through a third party, without prejudice to loss of the right to return of the performance bond or the right to compensation under the general terms.
4. As soon as the works to correct defects are completed, a new inspection and provisional acceptance procedure takes place.

Article 166
Final acceptance

1. At the end of the guarantee period for the work or for each of its parts, there is a new inspection for the purpose of definitive acceptance of the work, whose procedure must be defined in the contract.
2. The final acceptance is formalised in a deed.
3. The final acceptance depends on the cumulative verification of the following assumptions:
 - a) Regular functionality, at the end of the guarantee period, under normal conditions of exploitation, operation or use, of the work and respective equipment, so that they comply with all contractual requirements;
 - b) Fulfilment, by the contractor, of all obligations arising from the guarantee period relative to all or part of the work to be received.
4. The provision in the previous number is applicable, with the necessary adaptations, to the cases of partial final acceptance.
5. If, as a result of the inspection provided for in this Article, it is found that there are defects in the work that are the responsibility of the contractor, only works that meet the conditions set out in paragraph 3 and that are susceptible of partial acceptance may be received, and the developer shall proceed, in relation to the others, under the terms provided for in the previous Article.
6. The precepts that regulate provisional acceptance in relation to the same matters are applicable to the inspection and the final acceptance document, as well as to the failure by the construction owner to schedule or carry out the inspection.
7. The contractor is released from liability for defects in the work that are found after final acceptance, unless the developer proves that the defects are culpably attributable to the contractor.

Section VIII
Liquidation of the work

Article 167
Preparation of the bill of costs

1. In the absence of contractual stipulation, the final account is drawn up after provisional acceptance.
2. Works and amounts for which claims are pending decision shall be settled as and when they are finally decided.

Article 168
Elements of the account

The final account shall include the following items:

- a) A tender to which are taken, by global sums, the values of all measurements and revisions or adjustments arising from decided claims, the premium for early performance of the contract and the contractual penalties applied;
- b) A statement of the additional work and work to be done less, indicating the unit prices at which they were paid;
- c) A statement of all the works and values about which claims or reservations of the contractor remain undecided, with express reference to the statement of the previous paragraph, whenever they are also included therein.

Article 169
Notification of the final account to the contractor 1.

- 1. Once the final account has been prepared, it shall be sent, within 15 days, to the contractor, who may, within the same period, sign it or, disagreeing with it, present a justified claim.
- 2. For the purposes of the previous subsection, the contractor may consult and examine the documents supporting the preparation of the final account.
- 3. The owner shall communicate its decision on the claim to the contractor within 30 days of its receipt.
- 4. Irrespective of the signing of the final account, failure by the contractor to submit a claim within the time limit set out in paragraph 1 shall be deemed to constitute acceptance of the claim, without prejudice to pending claims.

Section IX
Non-compliance with the contract

Article 170
Delay in the execution of the work

- 1. In case of delay in the beginning or in the conclusion of the execution of the work due to facts that can be imputable to the contractor, the owner of the work may apply a contractual penalty, for each day of delay, of up to 0.05% of the contract value.
- 2. In the case of failure to meet partial deadlines for performance of the work due to the contractor's fault, the provisions of the previous paragraph shall apply, with the amount of the contractual penalty provided for therein being reduced by half.

3. The contractor is entitled to repayment of the sums paid as a contractual penalty for failure to meet partial deadlines for performance of the work when he recovers the delay in performance of the work and the work is completed within the deadline for performance of the work.

Article 171

Deviation from the work plan

1. In case of deviation from the work plan that, unjustifiably, jeopardises compliance with the deadline for execution of the work or the respective partial deadlines, the owner of the work may notify the contractor to present, within 10 days, a modified work plan, adopting the necessary corrective measures to recover the delay verified.
2. After the notification provided for in the previous paragraph, if the contractor does not submit a modified work plan in a manner deemed appropriate by the client, the latter may draw up a new work plan, accompanied by a statement justifying its feasibility, and shall notify the contractor thereof.
3. If new deviations occur, either in relation to the work plan modified by the contractor or to the work plan notified by the developer under the provisions of the previous subsection, the developer may take administrative possession of the work, as well as of the movable and immovable property assigned to it, and perform the work, directly or through a third party, making the necessary inventories, measurements and evaluations.
4. Without prejudice to the provisions of the preceding paragraphs, the contractor is liable to the owner of the work or to third parties for damage arising from unjustified deviation from the work plan, either with respect to the content of the respective provision or with respect to the deadline for execution of the work.

Section X

Termination of the Contract

Article 172 Termination

Termination by the main contractor

1. Without prejudice to the general grounds for terminating the contract and others provided for herein and the right to compensation under the general terms, the developer may terminate the contract in the following cases:
 - a) If the contractor, in a serious or repeated manner, fails to comply with the provisions of the legislation on safety, hygiene and health at work;
 - b) If, having missed the formalization of access to the site where the works are to be performed without a justification accepted by the construction owner, the contractor does not appear, after a second notification, at the place, date

and time indicated by the construction owner for a new formalization act, provided that the contractor does not present a justification for such absence that is accepted by the construction owner;

- c) If there is a delay in the beginning of work that is attributable to the contractor that exceeds 10% of the deadline for execution of the work;
 - d) If the contractor does not begin the execution of the complementary works 15 days after the notification of the decision of the construction owner that rejects the complaint presented by the contractor and reiterates the order for its execution;
 - e) If the execution of the works is suspended by the construction owner for reasons attributable to the contractor or if the contractor suspends the execution of the works without cause and outside the cases provided for in Article 150, provided that the suspension causes serious damage to the public interest;
 - f) If there are deviations to the work plan under the terms of paragraph 3 of the previous article;
 - g) If the defects detected during the guarantee period of the work have not been corrected or if the execution of the defective work is not repeated or the defective equipment is not replaced.
2. The grounds for termination provided for in the previous number have a sanctioning nature.

Article 173

Termination by the contractor

1. Without prejudice to the general grounds for termination of the contract and other grounds provided for therein, and to the general right to damages, the contractor shall be entitled to terminate the contract in the following cases:
- a) If the contractor is not given access to the site where the work is to be performed within six months from the date of signature of the contract for reasons not attributable to the contractor;
 - b) If, having provided partial access, the delay of total access or of the subsequent partial access causes the suspension of the works for more than 120 days, consecutive or interpolated;
 - c) If, having evaluated the complementary works and lesser works related to the contract and resulting from acts or facts not attributable to the contractor, a reduction greater than 25% of the contract price occurs;
 - d) If the suspension of the work continues:

- i. For a period exceeding 25% of the period of execution of the work, when resulting from a case of force majeure;
 - ii. For a period exceeding 15% of the same period, when it results from an act that is attributable to the construction owner.
- e). If the contractor commits or causes a fact that results in greater difficulty in carrying out the work, with an increase in the respective charges, and the contractor's damages exceed 20% of the contractual price.

TITLE VI
ADMINISTRATIVE AND JUDICIAL GUARANTEES

CHAPTER I
ADMINISTRATIVE GUARANTEES

Article 174
Administrative guarantees

1. Acts, omissions and documents in the procurement and award procedure shall be liable to:
 - a) Complaints;
 - b) judicial review.
2. It is not possible to complain against acts that decide on a previous complaint or appeal, except when the basis is the omission of a statement.
3. The filing of a complaint or appeal shall be governed by this Chapter and, subsidiarily, by the rules related to administrative complaint and appeals foreseen in the legislation that regulates the administrative procedure.
4. The lodging of a complaint or appeal is optional in nature.
5. The filing of a complaint or appeal shall not prejudice the right to file a judicial appeal, in accordance with the law.
6. The complaint and appeal must be presented within a maximum period of 15 days, except if a shorter period is established in the present statute, counting:
 - a) The date of the publication of the act or document in the Provisioning Portal, when this publication is mandatory, or the date of its notification;
 - b) The date in which the interested party has knowledge of the act or document;
 - c) The date when the act should have been done;
 - d) The date of the non-fulfillment of the decision duty.
7. The appeal may also be filed within 15 days from the notification of the decision on the complaint or from the expiration of the deadline for the issuance of such decision.

8. The presentation of a complaint or appeal does not suspend the performance of subsequent acts in the procedure in question.

Article 175 **Hearing of Interested Parties**

1. When the complaints and appeals have as object the qualification decision, the adjudication decision or the rejection of any of these decisions, the competent organ to hear the complaint or appeal must, within five days after its admission, notify the competitors so that they can, if they want, comment within 10 days.
2. When there is notification of those interested, the deadline for the decision is counted from:
 - a) The end of the deadline set for the hearing; or
 - b) The date of the last response from the interested parties, if it has occurred before the expiration of the deadline referred to in the previous paragraph.

Article 176 **Complaint**

1. The complaint is addressed to the author of the act and filed with the adjudicating entity.
2. The complaint must identify the object and expose its justifications and may be accompanied by the documents that are deemed convenient.
3. The competent body to hear the complaint must decide on its admission within five days.
4. The body competent to hear the complaint may only reject it outright when it is presented after the deadline or when it does not identify the procedure to which it refers.
5. The decision on the complaint shall be pronounced within 15 days from its admission.
6. The decision on the complaint must be founded and immediately notified to the interested parties.
7. The absence of a decision by the competent organ that is competent to hear the complaint, within the defined time limits, is equivalent to tacit rejection.
8. The competent organ to consider the complaint can, without subjecting the request of the complainant, confirm or revoke the act that is the object of the complaint, modify it or substitute it, as well as revoke, in all or in part, other acts of the respective

provisioning and contracting procedure of its authorship that are not the object of the complaint.

Article 177
Hierarchical appeal

1. The hierarchical appeal is addressed to the highest hierarchical superior of the author of the act and is presented to the adjudicating entity.
2. The hierarchical appeal must identify the object and expose its fundamentals, and may be accompanied by the documents that are considered convenient.
3. The competent body for hearing the hierarchical appeal must decide on its admission within 10 days.
4. The body competent to hear the hierarchical appeal may only reject it outright when it is filed after the deadline or when it does not identify the procedure to which it refers.
5. The decision on the hierarchical appeal shall be made within 30 days from its admission.
6. The decision on the hierarchical appeal shall be justified and immediately notified to those interested.
7. The absence of a decision by the body competent to hear the hierarchical appeal, within the defined time limits, is equivalent to an implied rejection.
8. The competent body to hear the hierarchical appeal can, without subjecting the request of the appellant, confirm or revoke the act subject to appeal, modify or replace it, as well as revoke, in whole or in part, other acts of the respective provisioning and contracting procedure of the authorship of the appealed body that are not subject to hierarchical appeal.

CHAPTER II
JUDICIAL GUARANTEES

Article 178
General Rule

The acts, omissions and documents of the provisioning and contracting procedure, as well as the decisions issued within the ambit of complaints and administrative resources foreseen in the present document, are subject to judicial appeal under the terms of the law.

Article 179
Court action

1. The Court of Justice shall be seised by the competent court in accordance with the rules of judicial organisation.
2. The judicial appeal must be lodged within the time limit set by the law governing administrative litigation.
3. The judicial appeal has only devolutive effect.

Article 180
Settlement of disputes

1. The parties to a contract may agree to submit to arbitration any disputes arising under the present statute.
2. Recourse to arbitration shall be provided for under the contract, which shall namely establish the applicable regime, the place of arbitration and the rules for appointing arbitrators.

Article 181
Competent court

Matters arising from the application of the regime provided for in the present statute, including relations of a contractual nature, shall be submitted to the legislation in force and to the competent courts under the terms of the law, including submission of the dispute to an arbitral tribunal, when such is provided for in the contract.

TITLE VII
CONTROL

Article 182
Internal control

1. The services and entities of the Public Administrative Sector establish internal mechanisms of control and inspection of the provisioning and contracting procedures and the execution of contracts that verify and guarantee the fulfillment of the principles and rules foreseen in the present document.
2. The mechanisms foreseen in the previous number must establish the punctual and regular control and supervision of the provisioning and contracting procedures and the execution of contracts, foreseeing differentiated practices according to the value and/or risk of the procedures and contracts, with special focus on procedures and contracts of high value and of a non-competitive nature, as well as actions by sampling and random.

3. The organic units of the services and entities of the Public Administrative Sector responsible for the audit carry out verifications and punctual and regular evaluations of the provisioning and contracting procedures and of the execution of contracts in accordance to the internal mechanisms of control and supervision referred to in the previous paragraphs.

Article 183
External control

1. The Chamber of Auditors, the Anti-Corruption Commission and the inspection, control and audit services of the Public Administrative Sector supervise the provisioning and contracting procedures and the execution of contracts of the services and entities of the Public Administrative Sector, under the terms of the present document, of the respective organic laws and other applicable legislation.
2. The services and entities of the Public Administrative Sector cooperate and provide all clarifications requested by the entities identified in the previous number.

TITLE VIII
ADMINISTRATIVE OFFENCES AND PENALTIES

Article 184
Competence

It is up to the National Provisioning Commission to instruct the administrative offence processes in accordance with the regime established by the present document.

The application of the fines and accessory sanctions in accordance with the regime established by the present document, falls to the Director of the National Provisioning Commission.

The adjudicating entities must participate to the National Provisioning Commission any facts susceptible of constituting administrative offenses under the terms of the present document.

Article 185
Administrative Offenses

1. The following fines are applicable to the administrative offenses foreseen in the present article, without jeopardy of the application of a more serious penalty or sanction that is applicable by force of another legal provision:
 - a) When they are qualified as very serious, a fine from US\$ 1,000 to US\$ 3,000, in the case of natural persons, or from US\$ 2,000 to US\$ 30,000, in the case of legal persons;

- b) When qualified as serious, a fine from US\$ 500 to US\$ 1,500, in case of natural persons, or from US\$ 1,000 to US\$ 15,000, in case of collective persons;
 - c) When qualified as minor, a fine from US\$ 250 to US\$ 750, in case of natural persons, or from US\$ 500 to US\$ 7,500, in case of collective persons.
2. Article 49 Misdemeanor constitutes a serious misdemeanor:
- a) The participation of the competitor that is in any of the situations foreseen in article 29 at the moment of the presentation of the respective candidacy or proposal, the adjudication or the celebration of the contract;
 - b) The presentation of false documents of qualification, qualification or that are part of the candidacy or proposal;
 - c) The provision of false statements within the provisioning and contracting procedure;
 - d) The breach of contract that has given origin, in two different contracts, in the last two years, to the application of contractual sanctions for damages.
3. It constitutes a serious administrative offence:
- a) The failure by the private contracting party to provide the bonds within the time and under the terms foreseen in the present document;
 - b) The failure of the private contracting party to show up on the date, time and place set for the signing of the contract;
 - c) The non-delivery of the signed contract within the deadline;
 - d) In case the contractor is a group, the fact that its members are not associated before the date of signature of the contract;
 - e) The non-appearance of the private contracting party on the day, time and place fixed for the formal act of access to the work site.
4. It constitutes a light administrative offence:
- a) The participation in the same provisioning procedure in a singular manner and through a grouping or through more than one grouping;
 - b) The non-reduction in writing of the subcontracts and or its notification.

Article 186
Attempt and negligence

- 1. Attempt and negligence are punishable.
- 2. In case of attempt or negligence, the minimum and maximum limits of the fines provided for in the preceding articles shall be reduced by half.

Article 187
Additional penalty of prohibition of participation

1. The accessory sanction of prohibition to participate as a candidate, invitee, competitor or member of a candidate, invitee or competitor group, in any provisioning procedure adopted for the formation of contracts can be applied to the infractor when the seriousness of the infraction and the agent's fault justifies it.
2. In the cases of sanctioning resolution foreseen in paragraphs c) to h) of No. 1 of article 138 and in article 172, the public contractor must communicate it to the National Provisioning Commission for the effects of the possible application of an accessory sanction.
3. The accessory sanction has a maximum duration of three years as of the definitive condemnatory decision.

Article 188
Determination of the applicable sanction

The determination of the fine and the accessory sanction is made according to the seriousness of the administrative infraction, the concrete illicitness of the fact and the offender's guilt and takes into account his previous conduct, as well as his economic situation.

1. The collection of the fines shall be promoted by the National Supply Commission through the issuance of a payment slip.
2. The proceeds of the fines shall revert to the Treasury.
3. When not paid voluntarily, the fines applied in administrative offence processes may be coercively collected.

Article 190
Publication of ancillary sanction

The definitive decisions of the application of the accessory sanction are published in the Provisioning Portal during the entire period of the respective duration.

Article 191
Statute of Limitation

1. The administrative offence procedure shall be extinguished by statute of limitations as soon as three years have elapsed since the commission of the administrative offence.
2. Fines and ancillary sanctions shall become statute-barred within three years from the final conviction decision.

**TITLE IX
FINAL AND TRANSITORY PROVISIONS**

**Article 192
Amendment to Decree-Law 14/2011, of 30 March**

1. Articles 1, 2, 3 and 5 of Decree Law No. 14/2011, of March 30, which establishes the National Provisioning Commission, altered by Decree Law No. 28/2014, of September 24, are replaced by the following text:

"Article 1 [...]

The National Supply Commission, abbreviated as NAC, is a service of the direct administration of the State within the Ministry of Finance.

Article 2 [...]

1. [...]
2. The NAC is also responsible for supporting the execution of provisioning procedures by the Presidency of the Republic, the National Parliament, the Special Administrative Region of Oe-Cusse Ambeno and the municipalities, regardless of the respective value, when requested to do so.

Article 3 [...]

The CNA pursues the following tasks:

- a) Instruction the provisioning procedures of a value equal or superior to US\$ 1.000.000;
- b) Instruct the provisioning procedures of a value inferior to USD 1.000.000, when requested by the adjudicating entity;
- c) Provide support in the provisioning procedures of a value inferior to US\$ 1.000.000, when requested by the adjudicating entity;
- d) Issue opinions and recommendations and elaborate models and forms with the intent of standardizing the procedures;
- e) Create databases of interested parties, candidates, competitors, adjudicators and private contractors that register their qualification and qualifications, as well as the fines and accessory sanctions applied under the contractual regime foreseen in the Legal Regime of Provisioning, of Public Contracts and its Infractions;
- f) Promote the training of human resources in the provisioning area;

- g) Instruct the processes within the scope of the administrative offence regime foreseen in the Provisioning, Public Contracts and Respective Infractions Legal Regime;
- h) h) Perform other tasks that are attributed by law.

Article 5

[...]

1. [...]
2. The Director of the CNA is also responsible for the application of fines and accessory sanctions, according to the administrative offence regime foreseen in the Legal Regime of Supply, Public Contracts and Respective Infractions".

Article 193

Repeal

The following are repealed:

- a) Decree-Law 10/2005 of 21 November, as amended by Decree-Laws 14/2006 of 27 September, 24/2008 of 23 July, 1/2010 of 18 February, 15/2011 of 29 March, 38/2011 of 17 August, 30/2019 of 10 December and 5/2021 of 23 April;
- b) Decree-Law 11/2005, of 21 November;
- c) Decree-Law no. 12/2005, of 21 November;
- d) Decree-Law no. 2/2009, of 15 January, amended by Decree-Law no. 12/2016, of 11 May;
- e) Article 2(1) and (2) and Article 3 of Decree-Law No 28/ 2014 of 24 September.

Article 194

Applicable law

In all matters that are not regulated in the present diploma, in other administrative legislation or in special law and that are not sufficiently regulated by application of the general principles of administrative law, civil law shall apply subsidiarily, with the necessary adaptations.

Article 195

Transitory standard

1. While the conditions for the integral processing of the provisioning and contracting procedures through electronic means are not created, all the documents of the

provisioning and contracting procedures can be presented on paper and all the notifications and communications foreseen in the present document can be done through mail or hand delivery.

2. The member of the Government responsible for the area of finances defines by ministerial document the date after which the conditions for the integral processing of the provisioning and contracting procedures through electronic means are considered created, after the opinion of the Information and Communication Technology Agency, I.P. - TIC TIMOR and the National Provisioning Commission.
3. Until 31 December 2022, the use of official languages in the provisioning procedures and in contracts, under the terms of No. 1 of Article 17, can be replaced by the use of working languages.

Article 196

Application in time

1. The present document is only applicable to the provisioning procedures initiated after the date of its entry into effect and the execution of contracts concluded as a result of provisioning procedures initiated after this date, without damage of the following paragraphs.
2. The present document is not applicable to the extensions of the deadline for the execution of the installments that constitute the object of contracts whose procedure has been initiated prior to the date of its entry into effect, without prejudice of the following number.
3. The present document is applicable to the provisioning procedures initiated before the date of its entry into effect and to the execution of contracts concluded as a result of provisioning procedures initiated before that date, whenever it is not in contradiction with the previous legislation or develops such legislation, as well as to fill existing gaps in this legislation.
4. The administrative offender processes relative to violations that occurred before the date of the present document's entry into effect follow the rules that were in effect on the date of its beginning or on the date of its occurrence, respectively.

Article 197 Entry into Force

The present diploma enters into force on January 1, 2023.

Approved by the Council of Ministers on 4 May 2022.

The Prime Minister, _____
Taur Matan Ruak

The Minister of Finance, _____
Rui Augusto Gomes

Promulgated on 6. 5. 2022 To be published.

The President of the Republic _____
Francisco Guterres Lú Olo

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