

DRNC/MEMP

**Note
about principal innovations of
the draft decree on public procurement**

The reform of the government procurement decree which occurred in February 2007 is certainly a major step in the process of modernization of the procedures and increasing transparency and efficiency in tendering, monitoring and management of public procurement.

The fact remains that, after almost two years of implementation, the reform of 2007 has highlighted a number of deficiency that it is necessary to remedy.

Hence the project which aims achieving a number of goals through innovations below:

1 - Consecration of the uniqueness of regulation on public procurement through the establishment of a single text covering the procurement of government, institutions and public enterprises, local community and their associations, as well as architectural services, taking into account the specific characteristics of theirs entities and the nature of services.

2-Simplification and clarification of procedures:

- Precise terms of apprehension of the best bid depending on the nature of the services concerned (works, goods and services);
- Clarify and simplify the assessment of bids or prices abnormally low or excessive.
- Removal of the mechanism of the draw for the designation of representatives of the administration in the tendering procedure committee.
- Accuracy criteria of assessment, evaluation, rating and ranking of the bids of suppliers based on the nature of the services concerned;
- Accuracy of the conditions of formation, restitution and forfeiture of temporary bonds;
- Clarification of procedures for reviewing and awarding prizes of separate batch contract;
- Definition and accuracy of architectural services contracts;
- Extending the duration of the master contract to five years for long-term leasing of vehicles and informatics' material;
- Definition, scope accuracy and clarification of the government procurement procedures of contracts concluded by invitation for proposals, with reinforcement of the composition of the tendering procedure committee;

- Requirement of tax certificate, the certificate of the social security (CNSS) and the commercial register only for the competitor to which the administration intends to award the contract;

3 - Strengthening the use of competition and equal treatment of competitors:

- Introducing an appeal mechanism for expression of interest for special services that require prior identification of potential competitors;
- Recourse to the negotiated procedure following a second tendering procedure declared unsuccessful;
- Reasons for the cancellation of a solicitation by a decision of the competent authority;
- Submission of architectural services to competition.

4 - Consolidation of the system of transparency and ethical management of public procurement:

- Consecration of the prohibition of the existence of conflicts of interest in the field of public procurement;
- Establishment of a period of three months for the preparation of reports of completion and execution of the contracts and accuracy of the recipient authorities;
- Clarification of the contents of the audit of the government procurement and thresholds for state and local community;

5 - Upgrading of the management of public procurement:

- Consecration of the public procurement portal as the national backbone of the entire public purchase;
- Introducing the possibility of recourse to the procedure for bulk purchases;
- Establishment of the e-purchasing process for the supply contracts;
- Establishment of a database of suppliers;
- Opening the possibility of electronic submissions;

6 - Improved security of competitors:

- Introducing the possibility for competitors to seek a postponement of the date of the opening of bids if deemed insufficient time to prepare its bid;
- Systematic review of prices for all works contracts regardless of their amounts or their turnaround and exclusion of supply and services contracts of this review;

7 - Development of mechanisms for complaints and appeals:

- Book a whole chapter to the claims of competitors and the administrative regulations and judicial disputes arising in the process of procurement;
- Introducing of a stand still before the approval of contracts (15 days) to the effect of leaving the possibility for competitors to enter their administrative appeal in accordance with current international standards;

- Introducing the possibility for competitors to enter directly the government procurement commission, with obligation to inform the contracting authority and the minister concerned;
- Establishment of a maximum period of 30 days for the relevant minister to respond to claims of competitors;
- Establishment of a period of 30 days at the government procurement commission to respond to requests and complaints of competitors;
- Institution of the obligation of keeping a register of complaints followed by the administrative authorities to which complaints are filed.

8 - Consideration of environmental protection:

In terms of the principles enunciated by the decree, protecting the environment and sustainable development are now considered as criteria for an effective purchase and efficient management of public purchase, with the introduction at the decree of provisions designated to protect the environment in the evaluation criteria and award of contracts for works, goods and services.