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15 FEB 2021

CIRCULAR LETTER No. /LC/MINMAP/CAB OF

Relating to requests for authorisation of the mutual agreement or State control special procedures.

THE MINISTER DELEGATE AT THE PRESIDENCY OF THE REPUBLIC IN CHARGE
OF PUBLIC CONTRACTS, AUTHORITY IN CHARGE OF PUBLIC CONTRACTS

TO

- PROJECT OWNERS
- DELEGATED PROJECT OWNERS

I have noticed that many Project Owners and Delegated Project Owners in general, Heads of Municipal Executives in particular are eager to request for authorisations of the mutual agreement or direct labour special procedures to carry out their projects, to the detriment of invitations to tender which constitute the normal public contracts award procedure and which, moreover, have the advantage to execute public procurement at competitive costs.

Furthermore, the reasons generally stated in most requests for mutual agreement do not fit into the limited cases defined in the Public Contracts Code, notably in the provisions of its Article 109.

Pursuant to the article mentioned above, the award of contracts through the mutual agreement procedure may only be requested:

- a) for needs which can only be satisfied through a service requiring the use of a patent, process, know-how, licence or exclusive rights held by a single contractor, a single service provider or a single supplier;
- b) for the replacement of defaulting contractors or suppliers in case of emergency;
- c) for works, supplies or services and intellectual services which, in the case of extreme emergency prompted by a case of force majeure, cannot be subjected to a competitive bidding procedure time limit;
- d) for supplies, services or works intended to supplement those initially executed under an initial contract by the same contract holder, provided that the initial contract was awarded following a competitive bidding procedure and that the supplementary contract resulting therefrom concerns only supplies, services or works not contained in the initial contract but which are made necessary by unforeseen and external circumstances beyond the control of the parties, and that these supplies, services or works cannot be technically or economically separated from the main contract.

So, any request whose reasons do not fit into one of the cases referred to above shall have no outcome and no positive response.

With regard to requests for authorisations to carry out works through direct labour which, for some Project Owners, seems to have become the preferential method for the execution of public expenditure, many of them request for this authorization without complying with Article 5, paragraph kk of the Public Contracts Code which defines State control as "process by which the Administration decides to execute works using its own material and human resources".

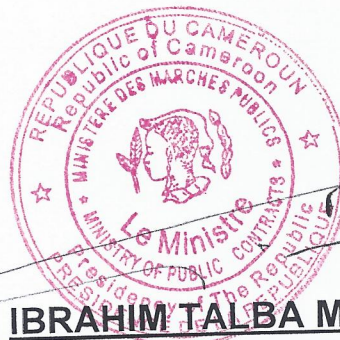
In any case, the Authority in charge of Public Contracts will ensure the strict application of the provision mentioned above, by granting State control authorization only to Project Owners or Delegated Project Owners who comply with the conditions stated above.

Consequently, I urge you to stick to your contracts award schedules as required by Article 59 of the Public Contracts Code and approved during Programming Conferences and thus, speed up their implementation on the basis of which your performance will be assessed.

I attach utmost importance to the strict observance of the instructions in this circular letter.

Copies:

- MINSTATE/SGPR
- SG/PM's OFFICE
- D-G/ARMP
- RDs & DDs /MINMAP
- COMMUNICATION UNIT
- MONITORING UNIT



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