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“THE MAIN OBLIGATIONS OF PROJECT OWNERS AIMED AT ENSURING COMPLIANCE WITH GOVERNANCE IN PUBLIC PROCUREMENT”





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INTRODUCTION

Project Owners who include the Heads of Ministerial Departments or persons ranking as such, Chief of the Executives of Regional and Local Authorities, General Managers/Directors-General and Directors of Public Enterprises or Public Administrative Establishments, representing the administrations beneficiary of the services subject of public procurement, by virtue of the regulations, have obligations which they must fulfil in order to ensure compliance with governance in public procurement, which is based on the following five key principles: **free access, equal treatment of candidates, transparency, efficiency and integrity (Article 2 of the Public Contracts Code)**.

Given that governance is a polysemous concept, it should be understood literally within the context of our presentation, which refers to all the decision-making processes, rules, practices, entities and bodies that help ensure the optimal functioning of the activities inherent to public procurement.

The legal framework governing public procurement in our country is based on Presidential Decrees No.2018/355 of 12 June 2018 to lay down Common Rules Applicable to contracts of Public Enterprises and No. 2018/366 of 20 June 2018 to institute the Public Contracts Code. This reviewed framework equally includes subsequent instruments, signed by the Authority in charge of Public Contracts, among which the Circular of 24 April 2022 on the implementation of the Public Contracts Code as well as the General Administrative Conditions (GAC) applicable to public contracts.

Other instruments of general interest, such as the Law of 11 July 2018 to lay down the Cameroon Code of Transparency and Good Governance in Public Finance Management can also be mentioned.

In the light of the above-mentioned texts, Project Owners (POs) and Delegated Project Owners (DPOs) shall henceforth be Contracting Authorities for their contracts, without any threshold restriction. In that capacity, they shall, in the execution of projects, be notably responsible for:

- conducting prior studies;
- the maturity of the projects to be charged into the budget;
- preparing the draft contracts award and execution plan;

- ensuring the availability of funding;
- preparing consultation files;
- launching consultations;
- the award of contracts;
- signing and notifying contracts;
- terminating public contracts;
- monitoring and controlling public contracts through the Contract Manager, the Contract Engineer and the Project Manager, where applicable.

So, in order to ensure compliance with governance in public procurement, Project Owners (POs) and Delegated Project Owners (DPOs) must comply with regulatory provisions governing the various stages of the public procurement cycle, both with regard to prior studies and maturity of projects (I), contracts programming (II), their award or contracting (III) and execution (IV) as well as exceptional procedures (V), under penalty of possible sanctions in the event of proven misconduct (VI).



POs/DPOs OBLIGATIONS AT THE PRIOR STUDIES AND PROJECT MATURATION STAGE

Within the meaning of the provisions of the Public Contracts Code, prior studies are compulsory and must define the specifications and scope of the services to be provided under the contract and lead either to a preliminary design, defining all the characteristics of the structure to be executed or supplies to be delivered, or to the Terms of Reference for the services concerned, with the aim of preparing the corresponding Tender File (TF) **Article 54 (1) of the Public Contracts Code**.

These prior studies, which are an essential link in project maturity must, notably take into consideration:

- a) the destruction of property, bare ownership, displacement of networks, release of right of ways, compensation of evicted persons and conditions of access when it comes to works contracts;
- b) the promotion of employment through the use of local resources such as manpower, equipment and local materials;

c) compliance with safety and environmental standards;

d) etc.

Consequently, in order to avoid situations that can negatively impact the execution of projects through the abandonment of projects, the extension of execution deadlines and the increasing number of amendments/additional clauses with a financial incidence resulting from the review or correction of initial studies deemed poor or unsatisfactory, Project Owners and Delegated Project Owners must ensure the quality of the prior studies for their projects and, by extension, their maturity, before the launch of any related consultation.

II

POs and DPO's OBLIGATIONS AT THE CONTRACTS PROGRAMMING STAGE

Public Contracts Programming, considered as a real “**dashboard**” for all the stakeholders in the system, is institutionally based on the Public Contracts Code, which states in **Article 59 (1)** that: “*the award and execution of public contracts must be programmed by the Project Owners and Delegated Project Owners, in conjunction with the Ministry of Public Contracts*”.

This programming requirement is also prescribed to General Managers of public enterprises through the combined provisions of **Articles 8 and 23** of the aforementioned Decree No. 2018/355 of 12 June 2018.

Given that the programming outputs, which include contracts award and execution plans, constitute the “**steering tools**” of the life cycle of contracts, therefore provide POs and DPOs with a good visibility on the pace and rhythm of the activities they carry out.

Moreover, by publishing contracts programming logbooks and subsequently updating them, contribute not only to upholding the fundamental principles recalled above, but also and above all, to regularly informing the public. This, in line with the prescriptions of the Law of 11 July 2018 relating to the Cameroon Code of Transparency and Good Governance in Public Finance Management. Thus, each enterprise, depending on its capacities, can have a range of services for which it could bid.

It therefore appears from the above that contracts programming is a regulatory requirement that constitutes one of the essential prerequisites to be met before launching any competitive bidding or consultation of companies by the Project Owners and Delegated Project Owners.

III

POs and DPOs OBLIGATIONS AT THE CONTRACTS AWARD STAGE

Within the framework of public contracts award, in addition to Internal Public Contracts Administrative Management Entities (SIGAMP) which POs and DPOs must set up (**Article 8 (1) of the Public Contracts Code**), they have at their disposal Tenders Boards (TB) which are technical support bodies for the award of public contracts whose amounts are at least equal to CFA Francs five (5) million (**Article 9 of the Public Contracts Code**).

The regulatory mechanism in equally also provides for Central Contracts Control Boards which are technical bodies under the Minister in charge of Public Contracts They are responsible for the ex-post control of public contracts award procedures within their remit, initiated by the Project Owners and Delegated Project Owners (**Article 24 (1) of the Public Contracts Code**).

Thus, for the optimal accomplishment of the duties they are assigned at the contracts award stage, Project Owners and Delegated Projects Owners shall be bound to:

- send the adopted contracts programming to the Tenders Board as well any updates, since the TB can validly reject a project that has not been programmed;
- stick the adopted schedule in the updated programming logbook, and in particular the dates of transmission of files to the Tenders and Control Boards.
- designate collaborators with a sound knowledge of the file, either for the presentation to the Board or for review of the related tenders in the Bids Evaluation Sub-Committee;
- forward to the Central Contracts Control Boards, the files of falling within their thresholds;
- sign, publish and notify award decisions within statutory deadlines (**Article 101 of the Public contracts Code**) that is:

- ✓ five (5) working days from the date of receipt of the final award proposal from the relevant Board, except in the case of suspension of the procedure, for the signature of the award decision and the publication of the results;
- ✓ seventy (72) hours from the date of signature, for the notification of the award decision to the successful tenderer;
- abide by ARMP regulatory decisions;
- abide by the opinions of the Central Contracts Control Boards and the decisions of the Authority in charge of Public Contracts on appeals and petitions tabled to it;
- abide by the procedure governing the management of disagreements with Boards, especially abiding by the deadlines for referral to the said Boards or the Authority in charge of Public Contracts for possible requests for arbitration;
- ensure, in accordance with the provisions of **Article 125 (2) of the Public Contracts Code** that, the final contract, prepared by its services may, under no circumstances, change the scope and nature of the services provided for in the Tender File (TF), Only minor adjustments, without financial incidence or technical impact in relation to the successful bidder's tender shall be accepted.
- sign and notify the contracts within the statutory deadlines (**Article 107 of the Public Contracts Code**), that is:
- ✓ five (5) working days from the date of subscription of the draft contract by the successful bidder, for signing the contract;
- ✓ five (5) working days from the date of signature of the contract, for the notification of the signed contract to the successful bidder;
- abide by the forty-eight (48) or seventy-two (72) hour deadlines, as the case may be, for forwarding to MINMAP and ARMP, at the behest of SIGAMP, the documents generated by the award of the contracts;
- accredit the Chairpersons of Tenders Boards in accordance with the provisions of **Article 23 (3) of the Public Contracts Code**, in order to ensure the smooth functioning of the Board, and the payment of session allowances to Tenders Boards and Bids Evaluation Sub-Committees;

- ensure the transmission of the documents produced during the execution of contracts. to MINMAP and ARMP within the deadlines.

IV

POs and DPOs OBLIGATIONS AT THE CONTRACT EXECUTION STAGE

In accordance with the regulations in force, the Project Owner or the Delegated Project Owner shall monitor the execution of public contracts through the Contract Manager, the Contract Engineer, and the Project Manager, where applicable, (**Article 43 of the Public Contracts Code**).

To this end, the Project Owner shall:

- a) designate the Contract Manager as well as the Contract Engineer, and provide them with the appropriate means for proper discharge of their duties;
- b) sign Administrative Orders to commence execution;
- c) sign Administrative Orders having an incidence on costs, time-limits and objectives under the conditions specified in the General Administrative Clauses;
- d) designate a representative to chair the Service Acceptance Committee;
- e) order the payment of detailed accounts;
- f) terminate contracts after formal notice, where necessary;
- g) ensure the drafting of contracts execution completion report.

Considering the above missions assigned to the Project Owner, he has an important responsibility in the monitoring and control of his contracts. Thus, in order to achieve the targeted objectives, he must necessarily meet a certain number of obligations, notably to:

- notify the contract to its holder before any start of execution;
- issue the Administrative Orders to commence service delivery to the contractor within fifteen (15) calendar days, of notification of the contract, in accordance with the provisions of **Article 123 (5) of the Public Contracts Code**;

- ensure the availability of the necessary guarantees and insurance in accordance with the clauses of the contract. To this end, it is strongly recommended that POs systematically check the authenticity of the said documents with the issuing services before validating them;
- include in the works sheets (statement of works) only the services actually executed, validated by the Contract Engineer and the Project Owner, where applicable;
- ensure that any modification affecting the technical specifications of the basic contract is the subject of a prior study on the scope, cost and deadlines of the contract;
- ensure that, in case of contract price overrun, changes may be made only through a contract amendment, and the resulting additional services are paid only after signature of the contract amendment;
- ensure that the amendment is reviewed and adopted by the relevant Boards for the initial contract, and that the overall amount of the amendment is capped at thirty percent (30%) of the initial contract amount (**Article 130 (3) and (4) of the Public Contracts Code**);
- regularise in advance, through amendment, Administrative Orders whose financial incidence is less than ten percent (10%) of the contract amount, before paying for the related services (**Article 130 (5) of the Public Contracts Code**);
- ensure that the stakeholders authorised to monitor and control the contracts, who include the Contract Manager, Contract Engineer and the Contract Manager each carry out the tasks assigned to them under the contract;
- ensure the application of delay and specific penalties, whose tax inclusive cumulative amount may not exceed ten per cent (10%) of the tax inclusive amount of the initial contract with its amendments, if any, at the risk of termination (**Article 169 (2) of the Public Contracts Code**);
- carry out, within thirty (30) days from the date of the request for acceptance sent by the contract holder, the provisional acceptance of services by an acceptance committee or technical validation committee with, as the case may be, if all the conditions for the said acceptance are met (**Point 198 of the Circular for the implementation of the Public Contracts Code**);
- pronounce final acceptance within a maximum of fifteen (15) calendar days from the expiry of the guarantee period for contracts subjected to a guarantee period, unless otherwise stipulated in the Special Administrative Clauses of the Contract (**Point 203 of the Circular for the implementation of the Public Contracts Code**);
- send a convening notice, together with all the required documents, to the members of the acceptance or technical validation committee, including the representative of the Ministry in charge of Public Contracts who shall attend as an observer, at least seven (7) days before the date scheduled for the acceptance. The latter shall not sign the minutes. However, he shall sign the attendance sheet (**Point 205 of the Circular for the implementation of the Public Contracts Code**);
- ensure that the acceptance or monitoring and technical validation operations have given rise to the signing, on the spot, of an acceptance report mentioning whether or not it is pronounced and, where applicable, the reservations to be lifted, together with deadlines, before pronouncing the said acceptance. The said acceptance report shall be valid only if it is signed by at least two-thirds (2/3) of the members, including the Chairperson (**Article 157 (2) of the Public Contracts Code**);
- ensure that within a period of one (01) month from the final acceptance, the Contract Manager, or if need be, the Project Manager, has drawn up the general and final detailed account which is submitted to MINMAP for endorsement (**Point 207 of the Circular for the implementation of the Public Contracts Code**);
- ensure that for the termination of the contract due to default by the contracting partner, the regulatory procedure has been followed, especially the notification to the contracting partner of the formal notice to comply within a period which cannot be less than twenty-one (21) calendar days, unless otherwise provided for in the Special Administrative Clauses. It is understood that this period of twenty-one (21) days is a minimum period. Consequently, POs and DPOs must take into account the type of the services to be executed in order to set realistic deadlines (**point 209 of the Circular for the implementation of the Public Contracts Code**);

- abide by the deadlines for forwarding the documents produced during the execution of contracts to MINMAP and ARMP, at the behest of SIGAMP (**Point 9 of the Circular for the implementation of the Public Contracts Code**).

V

POs and DPO's OBLIGATIONS RELATING TO DISPENSATORY (EXCEPTIONAL) PROCEDURES

MOs/MODs may solicit from the Authority in charge of Public Contracts, in accordance with the provisions of **Article 50 of the Public Contracts Code**, the authorisation for waiver procedures. The two main waiver procedures are mutual agreement and direct labour (State supervision).

- (i) the award of contracts of mutual agreement, which is provided for in **Article 109 of the Public Contracts Code** and whose procedure for obtaining authorisation and implementation is set out in **Points 126 to 132 of the Circular on the implementation of the Public Contracts Code**;
- (ii) the execution of works under State supervision (direct labour), which is governed in the Circular on the Instructions relating to the Execution of the Finance Laws, the Monitoring and Control of the Execution of the Budgets of the State and Other Public Entities for the 2023 Fiscal Year, in its **points 297 to 304**.

It should be noted that the execution direct labour (**Article 148 (1) of the Public Contracts Code**), especially, is subject, on the one hand, to the justification by the PO or DPO of the possession of its own human, material, technical and financial resources; and on the other hand, to the authorisation of the Authority in charge of public contracts (**Article 149(2) of the Public Contracts Code**). Besides, POs and DPOs must, for the current financial year, submit their related applications for authorisation no later than 15 October 2023 (**Circular No.0006/C/MINFI of 30 December 2022** on the Instructions relating to the Execution of the Finance Laws, the Monitoring and Control of the Execution of the Budgets of the State and Other Public Entities for the 2023 fiscal year).

VI

CASE OF POSSIBLE BREACHES OF REGULATORY OBLIGATIONS

The Project Owner shall be responsible notably for:

- deficiencies discovered during the execution of a contract and which themselves result from poor preliminary studies for which he is responsible, by virtue of the provisions of Article 6 of the Code;
- failures and inadequacies in the exercise of his prerogatives of management, control and sanction of the contractor in the event of default or unilateral modification of the contract. Where, for example, he does not provide the logistical and financial resources necessary for the Contract Manager and Contract Engineer to ensure regular monitoring of the execution of services and this results in poor or partial execution of the services, he shall be liable;
- the consequences of delays or failures in providing the resources (sites, access, etc.) or in communicating the pertinent information required for the execution of a contract;
- the consequences of late approval of the execution documents or of the inadequacies of the execution documents which it has approved;
- the discrepancies in the costs, deadlines and/or objectives of a contract;
- payment of undue detailed accounts in his capacity as an Authorising Officer;
- the effects of a late or absence of reaction to a difficulty or a request for information submitted by the contract holder;
- the execution of services without the existence of financing;
- modification of the works without amendments.

The Project Owner shall also be liable in the following cases:

- if he has not ordered and ensured the correction of the shortcomings of a contracting partner of the Administration which have been brought to his attention by the Project Manager, the Contract Engineer or any other controller of the contract;

- In the event of payment for services containing deficiencies that have been brought to his attention;
- In the event of failure to mobilise the guarantees of defaulting contracting partners whose contracts he has terminated.

For your information, in general, it should be recalled that any procedure carried out in violation of the provisions of the Contracts Code, as well as the perpetrators of malpractices in the award or execution of public contracts, are liable to the sanctions provided for by the laws and regulations in force.

Moreover, the Authority in charge of Public Contracts may take a decision against public sector stakeholders found guilty of violating the provisions of the Code, banning them from being involved in the award and monitoring of the execution of public contracts for a period not exceeding two (2) years in accordance with the provisions of **Articles 184 and next of the Public Contracts Code**.

As public employees, Project Owners are subject to the ethical principles of **Article 196 of the Public Contracts Code**, which states that "*Public sector employees, bidders and contract holders, as well as any other person involved in whatever capacity in the public contracts award, execution and regulation*

chain shall be subject to the provisions of the laws and regulations forbidding corruption, fraudulent schemes, collusive, coercive or obstructive practices, conflicts of interest, insider trading, and complicity".

CONCLUSION

In a nutshell, the Project Owner is the main person responsible for governance in the public procurement of his or her structure of which he is the alpha and omega. Even though he interacts with other bodies involved in the public procurement cycle notably Internal Tenders Boards, SIGAMP,..., he remains the main person responsible. This is moreover, the meaning of the increased responsibility conferred on him by the new Public Contracts Code in the execution of public procurement. However, this responsibility should not be considered, as some people claim to understand, as the leeway to decide on the choice of service providers in disregard of the fundamental principles of public procurement, that is: free access, equal treatment of candidates, transparency, efficiency and integrity.

Where the Project Owner properly fulfils his obligations as recalled above, compliance with governance in public procurement is guaranteed.