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Paix Travail Patrie

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PUBLIC CONTRACTS AWARD CONTROL GUIDE

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ABBREVIATIONS

AAMI	: Call for Expression of Interest Notice
AAO	: Tender Notice
ANO	: Non-objection opinion
APD	: Detailed Preliminary Design
APS	: Outline draft Project
CA	: Contracting Authority
CBPU	: Framework of Unit Price Schedule
CCCB	: Central Contracts Control Board
CDQE	: Framework of Detailed Quantity and Estimate
DCE	: Consultation Files for Enterprises
DF	: Supply Specification
DPAO	: Special Data Governing the Invitation to Tender
DPO	: Delegated Project Owner
EP	: Public Enterprises
EPA	: Administrative Public Establishments
FTVC	: Follow-up and Technical Validation Committee
GAC	: General Administrative Conditions
GG	: Mutual Agreement
IO	: Independent Observer
IS	: Instruction to Bidders
ITB	: Internal Tenders Board
MINMAP	: Ministry of Public Contracts
OIIT	: Open International Invitation to Tender
ONIT	: Open National Invitation to Tender
PO	: Project Owner
RDG	: Retention Bond
RGAO	: General Regulations Governing the Invitation to Tender
RIIT	: Restricted International Invitation to Tender
RLA	: Regional and Local Authorities
RNIT	: Restricted National Invitation to Tender
RP	: Request for Proposals
RPAO	: Special Regulations Governing the Invitation to Tender
RQ	: Request for Quotation
SAC	: Special Administrative Conditions
SCA	: Evaluation Sub-Committee
SPI	: Services and Intellectual Services
STC	: Special Technical Conditions
TF	: Tender File
ToR	: Terms of Reference



FOREWORD

The reform dynamics of the public contracts system initiated on the 9 of November 2011 by the President of the Republic, Head of State, was further intensified on the 12 and 20 of June 2018 with the reconfiguration of this system following the principle of full accountability of Project Owners (PO) and Delegated Project Owners (DPO), and of separation of public contracts award, control and regulation duties.

This full accountability of Project Owners (PO) and Delegated Project Owners (DPO) is governed by the strengthening of ex-ante and ex-post controls of the public contracts award process.

The aim of these controls is to guarantee compliance with the principles governing public contracts regulations; namely:

1. free access to public procurement;
2. equal treatment of candidates;
3. transparent procedures;
4. efficiency, and;
5. integrity.



These controls are each as far as they are concerned, carried out by several stakeholders (Public Contracts Authority, Ministry in charge of Public Contracts, Body in charge of the Regulation of Public Contracts, Regulatory Body, Tenders Boards/Contracts Control Boards...)

In this regard and for the accomplishment of this activity, a multitude of methodological approaches were observed, varying from one stakeholder to the other.

Reason for the need to work in order to establish a harmonised approach to control contracts award procedures initiated and conducted by Project Owners and Delegated Project Owners.

Apart from these objectives of unification and harmonisation of control practices, this manual equally has a didactic dimension, given that it shall enable the personnel involved in public contracts control activities to refer to it when necessary.

Therefore, by identifying the main stages of a public contracts award, it provides useful information on the prerequisites to control, the key points to verify.

INTRODUCTION

The Public Contracts System has been renewed on the one hand, by Decree No. 2018/366 of 20 June 2018 to institute the Public Contracts Code and on the other hand through Decree No. 2018/355 of 12 June 2018 to lay down common rules applicable to contracts of public enterprises.

This new Public Contracts Architecture set up within the public contracts award framework has enabled to define eight (8) major stakeholders for contracts governed by the Public Contracts Code, namely:

- i) the Authority in charge of Public Contracts;
- ii) the Ministry of Public Contracts;
- iii) the Project Owners and Delegated Project Owners;
- iv) the Public Contracts Regulatory Body;
- v) Tenders Boards;
- vi) Central Contracts Control Boards;
- vii) The Petitions Review Committee,
- viii) Bidders and the Administration's Contracting Partners.

And for contracts awarded by public enterprises, eight (8) major stakeholders have been defined, namely:

- i) the Authority in charge of Public Contracts;
- ii) Boards of Directors of public enterprises;
- i) the Ministry of Public Contracts;
- ii) the Public Contracts Regulatory Body;
- iii) Project Owners;
- iv) Tenders Boards;
- v) The Petitions Review Committee;
- vi) Bidders and the Administration's Contracting Partners.

This guide is a document which covers the various control activities at each stage of the contracts award procedure through invitation to tender, request for quotation or through mutual agreement and the contracting of an amendment.

It is a guideline for the control of a procedure or for a public contracts award procedure stage.

It is for every stakeholder involved in the control of a contract award procedure.

It introduces users to preliminaries (list of documents to use before the control of a given stage), documents to use (authors, beneficiaries, preparation and transmission deadlines) to consult in order to ensure respect of the procedure.

Apart from background information which contains definitions and the functions of public contracts award control stakeholders, in addition to the background information chapter, this guide covers three (3) chapters which respectively deal with:

1. the control of ordinary procedures;
2. the control of exceptional procedures, and;
3. the consequences of control.

focuses on five (5) main points namely:

- I. the quality control of enterprises consultation file (DCE);
- II. the control of compliance with procedures through:
 - compliance with procedure stages;
 - compliance with regulatory deadlines of contracts award;
 - the legality of an award;
- III. the control of conformity of a contract with the DCE and the bid;
- IV. the control of the legality of the signature of an amendment to a contract;
- V. the control of the legality of special procedures.

CHAPTER I: BACKGROUND INFORMATION

I.1. DEFINITIONS AND DUTIES

I.1.1. Definitions

Within the framework of the use of this guide, the following definitions shall apply:

- **Controller's guide:** document containing practical information enabling to verify at each stage of the contract award procedure governed by the Public Contracts Code or by common rules applicable to contracts of public enterprises, the legality, conformity and the quality of the activity carried out either by a tenders board or contract control board, or by a Project Owner or Delegated Project Owner.
- **Control of the award of a public contract:** all the activities to be carried out by the controller in order to ensure the legality, conformity and quality of operations carried out by the Project Owner or Delegated Project Owner or tenders board/Control board
- **Controller of a public contract award:** natural or legal person acting within the framework of the verification of the conformity, legality, or quality of a public contract award procedure governed by the Public Contracts Code or by the Decree to lay down common rules applicable to contracts of public enterprises.

I.1.2. Duties of stakeholders of contracts award control

The control of public contracts award is carried out at various stages of the contracting process, and each in his own sphere, by:

1. the Authority in charge of Public Contracts;
2. the Ministry of Public Contracts;
3. the Public Contracts Regulatory Body;
4. Tenders Board/ Control Boards;
5. Boards of Directors of public enterprises.

a. The Authority in charge of Public Contracts

In accordance with the provisions of Articles 50 and 190 of Decree No. 2018/366 of 20 June 2018, the Authority in charge of Public Contracts is the Minister in charge of Public Contracts. He organises and ensures the smooth functioning of the public contracts system.

In this that capacity, he:

- signs implementation instruments of the Public Contracts Code;

- imposes sanctions on perpetrators of malpractices and settles disputes ensuing from public contracts, as well as disagreements between public employees;
- has the powers to authorise special procedures.

The Authority in charge of Public Contracts may, of his own volition, impose-procedure related sanctions, where necessary.

As concerns public enterprises' contracts, the Authority in charge of Public Contracts may in conformity with the provisions of Article 107 of Decree No. 2018/355 of 12 June 2018 to lay down common rules applicable to contracts of public enterprises, carry out follow-up and control of contracts awarded by these stakeholders, in order to evaluate the quality of award and execution of services.

b. The Ministry of Public Contracts

In accordance with the provisions of Article 107 of Decree No.2018/355 of 12 June 2018 to lay down common rules applicable to contracts of public enterprises, contracts awarded by the said public enterprises are subject to a periodical control by the Ministry in charge of Public Contracts in order to evaluate the quality of award and execution of services.

For contracts governed by the Public Contracts Code, the Authority in charge of Public Contracts controls their award through the Ministry of Public Contracts which he mandates to this effect.

c. The Body in charge of the Regulation of Public Contracts

The public contracts regulatory body is the supervisor and facilitator of the public contracts system.

It shall, among others, examine disputes arising from public contracts procedures and express technical opinions to the Committee in charge of reviewing complaints submitted by bidders and propose procedure-related sanctions to the Authority in charge of public contracts.

Moreover, it recruits Independent Observers whom he places under tenders boards/contracts control boards, if applicable, to ensure compliance with public contracts regulations, transparency rules and principles of equity in the public contracts process, on the one hand, and the Independent Auditor charged to realise ex-post audit of contracts signed last year, on the other hand.

He collects and uses documents produced by the contract system, takes regulation instruments and he contacts the concerned within regulatory deadlines, for the following measures:

- the rectification of tender notices and award releases;
- compliance with procedures and regulatory deadlines;
- the respect of jurisdiction thresholds of tenders boards/control boards;
- the prevention of public contracts splitting;
- the transmission of public contracts documents;
- the taking into account of technical opinions from public contracts award and control bodies;
- the use of public contracts standard documents;
- the execution of the Independent Observer's missions;
- taking precautionary measures, in the event of procedures deemed illegal, pending the findings of the necessary investigations and the decision of the Authority in charge of public contracts.

d. Tenders Boards

Tenders boards are technical support bodies under Project Owners, Delegated Project Owners, Regional Governors, and Senior Divisional Officers for the award of public contracts whose amounts are at least equal to five (5) million francs CFA.

***N.B:** The threshold of five (5) million stated above concerns only contracts under the Public Contracts Code; that of public enterprises contracts being defined by Boards of Directors through resolutions.*

Tenders boards carry out quality control of public contracts award through:

- the review and expression of technical opinions on draft tender files, and requests for quotation prepared by Project Owners and Delegated Project Owners;
- the review and adoption, if applicable, of rating grids before the opening of bids;
- the adoption of bids evaluation sub-committees' reports and the formulation of contracts award proposals to Project Owners or Delegated Project Owners;
- the review and expression of a technical opinion on draft amendments and draft contracts awarded following the mutual agreement procedure.

e. Central Contracts Control Boards

Central Contracts Control Boards are technical bodies under the Minister in charge of Public Contracts, charged with ex-ante control of public contracts award procedures initiated by Project Owners or Delegated Project Owners and whose amounts are above or equal to :

- five (5) billion CFAF for road works contracts;

- one (1) billion CFAF for other infrastructure contracts;
- five hundred (500) million CFAF for works, building and community facilities contracts;
- two hundred and fifty (250) million CFAF for general supplies;
- one hundred (100) million CFAF for services and intellectual services contracts.

Central Contracts Control Boards are contacted by the Project Owners or Delegated Project Owners according to the nature of services and give an opinion on:

- tender files prepared by Project Owners or Delegated Project Owners reviewed by Tenders Boards;
- contracts award procedure;
- the award proposals of Tenders Boards validated by Project Owners or Delegated Project Owners;
- draft contracts awarded following the mutual agreement procedure of falling within their remit and any draft amendments.

N.B.: Contracts of public enterprises are not subject to the control of the Central Contracts Control Boards

f. The Boards of Directors

The Board of Directors is a body with the most extended powers to act in every circumstance in the name of the public enterprise.

It ensures compliance with the rules of competition, equal treatment of Candidates, transparency and just prices in the contracts award process.

The Board of Directors may, when necessary, assign some of its duties to the Chairperson of the Board of Directors.

I.2. THE OBJECTIVES OF THE PUBLIC CONTRACTS AWARD GUIDE

General objective:

The public contracts award control guide aims at putting in place a harmonised instrument for the facilitation of control procedures in order to ensure the best choice (best quality at the least cost) of the contractor and sanction if need be, the procedures carried out in violation of the regulation.

Specific objectives:

The specific objectives of the public contracts award control guide are as follows:

- i. List the checkpoints of each contract award procedure;
- ii. present the necessary modalities for proper control;
- iii. recall eventual sanctions and types of recommendations to propose for the management of malfunction cases.

CHAPTER II: CONTROL OF CONTRACTS AWARD NORMAL PROCEDURES

The control of every contract award procedure by a controller shall commence with the verification of satisfaction by the Project Owner and Boards of the prerequisites prescribed by Article 23 of Decree No. 2018/355 of 12 June 2018 or that of chapter 2 of Decree No. 2018/366 of 20 June 2018. Notably:

- the existence of prior studies (report, maturity visa);
- the programming of contracts (programming journal published by MINMAP or contract award plan approved by the Board of Directors);
- the availability of funding;
- the availability of site.

II.1. VERIFICATION OF THE QUALITY OF ENTERPRISE CONSULTATION FILE

The Consultation File of Enterprises (DCE) may be defined as a set of documents compiled in a unique document and enabling to organise competition within the framework of a contract award, while laying down the rules and conditions of execution.

As the case may be, the DCE may be in the form of a Tender File (TF), Request for Proposals (DP) or Requests for Quotation (RQ).

The verification of a DCE starts from its publication in the programming journal up to the deadline set for the submission of bids.

II.1.1. Verification of the documents accompanying consultation file

Every draft DCE, under pain of rejection, shall be accompanied by the following elements in accordance with Articles 23(a), 39(a) and 85 of Decree No. 2018/366 of 20 June 2018 to institute the Public Contracts Code:

Elements required	Controller's check-list
The convening notice	Has the regulatory deadline in convening sessions been respected?
Contracts award plan (PPM)	Does the file for control feature in the PPM?
Date of transmission of the file	The controller shall compare the effective transmission date of each file to the board in relationship to the date

	provided for in the award plan and bring out the possible gaps.
The availability of funding.	Has the funding proof been produced by the PO? It should be noted that the absence of this element is not a blocking factor at this stage of the procedure for recurrent services (Art 60(3)).
The introductory note of the draft DCE.	Has the introductory note been signed by the Project Owner?
The draft DCE proper	Does the hard copy (and soft if applicable) contain the required elements if applicable?
The draft DCE proper	Are the minutes of the board's review available?
	Is the transmission letter of the DCE by the PO available?
	Is the transmission letter of the minutes by the TB after review available?

II.1.2. Verification of compliance with the launching procedure of enterprises consultation file (DCE)

a. Verification of compliance with the procedure for an open national/international invitation to tender

Elements required	Controller's check-list
Quorum	Is the quorum reached (Article 17)?
Transmission letter	Has the PO transmitted the DCE to the TB?
Minutes of the review of the DCE	Has the Board reviewed the file?
Notification letter of TB opinion	Has the TB sent its report to the PO?
DCE corrected	Has the PO taken into account the observations of the TB?
Transmission letter of the PO reservations	In the event of disagreement on the observations, did the PO return the DCE to the board within regulatory deadlines?
Minutes of reservations review	Has the board re-examined the PO file?
Letter of transmission of the DCE	Has the PO transmitted the DCE to the CCCB (Central Contracts Control Board)?

Minutes of the CCCB review	Has the CCCB reviewed the file?
Transmission letter of the CCCB opinion	Has the CCCB transmitted its report to the PO?
DCE corrected	Has the PO taken into account the observations of the CCCB?
Referral letter to the ACMP/CA	Are disagreements handled in compliance with the regulation?
Proof of publication	Does the excerpt of the publication journal exist?

b. Verification of compliance with a restricted national/international invitation to tender procedure

In addition to the check-list of point (a) above, the check-list that follows shall be used:

Elements required	Controller's check-list
Proof of publication of AMI (Call for Expression of Interest)	Does the excerpt of the publication journal exist?
Deadline for the submission of expressions of interests	Is the deadline of 15-21 (RNIT) or 21-30 (RIIT) days respected?
Evaluation report	Has a sub-committee or committee evaluated bids?
Proof of publication	Has the short-list been published before the launching of the consultation (Art 76) of the Public Contracts Code?
Validity of the short-list	Does the duration between the publication of the AMI (Call for Expression of Interest) and that of the RIT (Restricted Invitation to Tender) exceed 6 months?
Composition of the short-list	Does the short-list comprise at least 3 candidates for each lot?
AAO (Tender Notice) for intellectual services with no ASMI	Has the PO obtained prior waiver from the Authority in charge of Public Contracts (Art 78 (3))?

N.B.: other cases may give rise to pre-qualification exemption by the Authority in charge of Public Contracts (see Article 78 (3)).

II.1.3. Verification of the quality content of a DCE (check-points)

The verifications concern all the types of Invitations to Tender (ONIT, OIIT, RNIT, RIIT, RQ, DP).

a. Verification of the Tender Notice (AAO)

The non-exhaustive points to verify in the AAO are the following:

Check-points	Controller's check-list
Publication	Has the Project Owner sent the AAO to ARMP on time (Art 19(3))?
	Was it published within a deadline of 24 hours by ARMP upon receipt?
	Has it been published in the two languages?
	Has it been transmitted to the Tenders Board within a deadline of 72 hours?
Deadlines for the submission of bids	ONIT/RNIT: is the bids submission deadline between 25-50 days and 20 days for cases of urgency?
	RQ: is the deadline for submission of bids 20 days?
	OIIT/RIIT: is the deadline for submission of bids 90 days?
Reference of the invitation to tender.	Is the reference in compliance with the following nomenclature?: No.____/IT... /TB/CCC... /PO or DPO/YEAR
Financing	Financing: does the Source, year and budget head exist? Are the shares of the different sources of funding specified if applicable?
Allotment	Are the lots distinguished according to their location? by their natures? Or by other objective criteria?
Participation	Is the quality of eligible service providers to whom the Invitation to Tender is addressed specified? For Restricted Invitations to Tender (RIT), is the short-list that which is published?
Execution or delivery deadline	Does the execution deadline exist? Is it compatible with the service concerned?
Estimated cost of services	Is the estimated cost of each lot mentioned?
Consultation of Tender File (TF) and submission of bids	Is the place of consultation and bids submission specified?

Clarification	Are the provisions relating to the request for clarifications specified?
Evaluation criteria	Are eliminatory criteria objective?
	Is the marking method in conformity with the nature of the service?
	Are the RPAO (Special Regulations Governing Invitation to Tender) evaluation in harmony with those of the AAO?
	Is there any criteria eliminatory and essential at the same time?
Purchase of the DCE (Consultation File)	Is the purchase cost of the Tender File, if required in conformity with the provisions No. 093/CAB/PM of 5 November 2002? Is the purchase fees venue indicated for the PO concerned?
Submission and opening of bids	
	Is the gap between bids submission local time deadline and bids opening local time deadline one hour?
	Is the opening method in conformity with the nature of the service?
	Is the number of copies (soft and/or hard) of bids for submission specified?
Bids validity	Is the deadline during which candidates remain committed by their bids specified and compliant?
Validity of documents	Is it specified that administrative documents must be dated for at most three months before bids submission date or established subsequently on the date of signature of the AAO (Invitation to tenders)?
Bid bond	- Is the value of the bond for each lot in conformity with <u>Order No. 093/CAB/PM of 5 November 2002</u> ?
	- Is the validity deadline of the bond in conformity with Art 90.4 of the Public Contracts Code?
Award	Is the award method in conformity with the nature of the services (lowest bidder) or not (best bidder)?
The maximum number lots that may be awarded	Are the award conditions of more than one lot defined?
	Is the award preference order, if applicable requested?
Additional information	Is the identity and services address to be contacted if necessary specified?
Corruption	Are MINMAP/NACC anti-corruption toll-free numbers specified?

b. Verification of General Regulations Governing Invitation to Tender (RGAO) or IS (Instructions to Bidders)

Does the RGAO correspond to that of the Model Tender File of the service concerned?

c. Verification of Special Regulations Governing Invitation to Tender (RPAO) or DPAO (Special Information governing Invitation to Tender)

In addition of AAO check-points, the following points shall be the subject of verifications

Check-points	Controller's check-list
Bids	Are conditions for bids presentation detailed? (presentation of envelopes and number of bid copies)
	Do lists of administrative, technical and financial documents to be produced exist?
Administrative documents	Are administrative documents requested in conformity with regulatory instruments?
	Is there a non-required administrative document requested?
	Are bonds amounts and purchase receipts specified?
	Is the eliminatory criteria relating to administrative documents in conformity with the Public Contracts Code?
Evaluation of bids	Are evaluation criteria pertinent and objective?
	Are sub-criteria objective, pertinent and compatible with the nature of the service and according to its complexity?
	Are the criteria neither discriminatory nor likely to be an impediment to the principles of equity or contrary to the rules of competition?
	Are all the pertinent documents requested in the bid the subject of an evaluation criteria or sub-criteria?
	Do the total and sub-totals of points/yes correspond to the criteria and sub-criteria?
	Is there harmonisation between the RPAO criteria, those of the AAO and those of the evaluation grid?
Award	Is the contract award method in conformity with the nature of the services? (Art. 99 of the Code)
INCOTERMS	Are INCOTERMS (International Commercial Terms) for international supplies specified and pertinent? If applicable.
Variants	Are variants admissible? If yes, are the conditions of their evaluation defined?

d. Verification of the Special Administrative Clauses (SAC)

Check-points	Controller's check-list
Definitions and duties	<p>Make sure that the SAC specifies the Contract Manager, Contract Engineer, Project Manager if applicable, the external controller of the contract execution.</p> <p>The appointment of the engineer must be in conformity with the instruments in force.</p>
Contract amount.	<p>Are the different taxes provided for and in conformity (VAT, IR (Income tax)/TSR (Special income tax), ...)?</p> <p>Is the contract concluded ATI (All taxes inclusive)?</p>
General instruments applicable	Among others, is the Finance Law as well as the Circular of application of the finance law of the ongoing financial year referred to?
Payment currency.	<p>Is the currency retained for the payment of services compatible with the source of financing?</p> <p>Is the currency exchange rate specified in the contract if applicable?</p>
Place and payment mode, Bank Identity Statement (RIB).	<p>Is the indication of the bank account in view of payments provided for?</p> <p>Is the selected bank authorized by the MINFI?</p>
Follow-up and Technical Validation or Acceptance Committee	Are the different members authorized to take part in the Follow-up and Technical Validation and Acceptance Committee listed? including MINMAP observer
Price revision or updating	<p>Does the related clause exist? If yes, is it compatible with the service deadline?</p> <p>Does the clause not concern revision and updating? (A revision clause cannot concern updated prices)</p>
Sub-contracting.	<p>Is sub-contracting provided for? If yes, is the percentage of services likely to be sub-contracted fixed?</p> <p>Are the documents to be produced by the sub-contracting above 10% specified in the Tender File Art 133 of the Public Contracts Code</p>
Joint contracting.	<p>Do the Special Administrative Clauses (SAC) specify if the group of undertakings are joint or several (Article 135 and 136 of the Public Contracts Code (PCC).</p> <p>For joint undertakings, are the services (lots) to be executed by each member specified?</p>

Check-points	Controller's check-list
State supervision (Article. 5.ff and 148 paragraphs 1 and 2 of the Public Contracts Code).	Is the rate of services to be executed under State supervision provided for? If yes, is it less than or equal to 2% of the amount all taxes inclusive (ATI) of the contract? (The indication NA/not applicable is equivalent to 0% rate)
Termination modalities.	Are the clauses relating to the termination procedure clearly stated? And are compliant with the provisions of Articles 180, 182, 184 of the Public Contracts Code, and the different General Administrative Clauses (CCAG).
Financial clauses	Are the rates of start-off advance in conformity with Article 160 of the Public Contracts Code?
	Is the guarantee at 100% of this advance provided for?
	Are the conditions for the reimbursement of advances in conformity with the regulatory provisions?
	Is the performance bond between 2% and 5% of the contract amount all taxes inclusive (ATI) of the contract or the tranche concerned if applicable? (Art. 138 of the Public Contracts Code)
	For services with a guarantee period (Intellectual services (SPI) excluded), is the related retention less than or equal to 10% of the amount inclusive of taxes; Art. 138.3 of the Public Contracts Code
Project management (Articles 5.k, 151.3 and 151.7 of the Public Contracts Code and Order No. 401/A/MINMAP/CAB of 21 October 2019)	Ensure that a private project management is provided for: <ul style="list-style-type: none"> - Works contracts ≥ 250 million? - supplies contracts ≥ 500 million?
	Is the Follow-up and Technical Acceptance Committee for intellectual services contracts amounting to ≥ 100 million is provided for? (It plays the role of private supervision)
Insurance policies.	A third-party insurance policy, any comprehensive construction site risk insurance if applicable provided for? (Article 143 of the PCC)
Payment modalities	Is the prior visa of MINMAP required for the general and final detailed account and the last bill (Circular letter No.000010/LC/MINMAP/CAB of 22 September 2020)
	Are Payment modalities relating to group of enterprises or sub-contractors clearly defined?
	Are the detailed accounts provided for in conformity with expected deliverables?
	Are the usual notification provisions of OS provided for?

Check-points	Controller's check-list
Notification of Administrative orders (OS)	Is the start-off administrative order taking effect from the date of notification?
Penalties.	Are delay and specific penalties provided for and compliant?
Management of disputes and disagreements	Are the usual provisions provided for?
	Are provisions relating to the settlement of litigation provided for?
Case of force majeure	Are the usual provisions provided for?
Editing and dissemination	Will editing and dissemination be done by the Project Owner (PO)?
Stamp duty and registration	Are the usual provisions provided for (7 copies)?
	Is registration provided for per notified tranche?

e. Verification of Special Technical Clauses (STC) / Supply Specifications/Terms of Reference

Special Technical Clauses (STC)

Check-points	Controller's check-list
Works consistency	Is the subject of works and venue in conformity with the AAO, RPAO, STC?
	Is the description of works done?
Technical specifications of the different trades.	- Do they exist?
	- Are they in compliance with the subject of the works?
	- Are standards and execution processes provided for?

The Specification of the Supply

Check-points	Controller's check-list
Supply consistency	Is the subject of supply and venue of delivery in conformity with the AAO, RPAO, STC?
Brand	Is the brand not specified?
Technical specifications.	- Are the technical specifications provided?
	- Are they in compliance with the subject of the supplies?
	- Are standards and execution processes provided for?
	- Are after-sales service (SAV) conditions specified, if applicable?
INCOTERMS	Are INCOTERMS (International Commercial Terms) for international supplies specified or pertinent? If applicable.

Terms of Reference

Check-points	Controller's check-list
Service consistency	Is the subject of services, venue and execution deadline in conformity with the AAO (tender notice), RPAO (special regulations governing invitation to tender) and CCAP (special administrative clauses)?
	Is the specification of tasks to be executed done?
Profile of key staff	- Is there conformity between qualification and quantity of experts provided for?
	- Are the profiles requested in conformity with service profession?
	- Is there compliance between the time to mobilize experts, the consistency of services and execution deadline?
	- Are the certificates and CV dated, and signed by each expert and by the enterprise/BET required?
The deliverables	Are the different reports to be produced specified? (Nature and number to be provided) in English or /and in French
	Is the planning of reports production provided for?
	Are the modalities of deliverables remuneration provided for?
Material means.	Is the list of material and the respective numbers specified
	Is there conformity between the material requested and the subject of the service?

f. Verification of framework of Unit Prices schedule (CBPU)

Check-points	Controller's check-list
The numbers of prices.	Are they in conformity with those of the quantity estimate framework and prices sub-detail framework?
Unit prices	Are unit prices specified and in conformity with description of the price?
Description of prices.	Is the description of each price done? Is it pertinent?
	Is the description of the price in conformity with the method of services execution concerned in the Special Technical Clauses/Terms of Reference/ Supply Specification?
	Is there duplicate in the prices?
	Are all the activities/tasks explicitly or implicitly the subject of a price?

Check-points	Controller's check-list
Indication of prices.	Ensure that prices indication is provided for in “figures” and “words”.

g. verification of the detailed quantity and estimate framework (CDQE)

Check-points	Controller's check-list
The prices	Do numbers, units and unit prices correspond to those of the Framework of Unit Price list (CBPU)?
	Have all the expected tasks in the STC/DF/ToR been implicitly or explicitly the subject of a price?
Quantities	Are they similar to those provided for in the prior studies?
	Are they in conformity with the subject of the mission and with execution deadline if applicable?
Taxes (Income tax, Special income tax TSR, VAT).	Are tax rates applied regulatory at the moment of signing the contracts?
Tranche contracts	Are there estimates and deadlines corresponding to each tranche?
	Do they call for observation?

h. verification of price sub-detail framework, breakdown of all- in prices or prices dissemination

Check-points	Controller's check-list
The prices	Does the model exist?
	Are the sub-detail headings enumerated?
	Are these headings in accordance with the service?

i. Verification of the overall conformity of the provisions of different documents of the draft DCE

Check-points	Controller's check-list
Overall conformity	Do all the documents mentioned in the contents feature in the document?
	Do all the templates and forms mentioned in the Special Regulations Governing Invitation to Tender feature in the document?
	Is the list of banking and financial establishments authorized that which is in force?

Enterprises Consultation Files and review minutes	Have the observations of the Board been taken into account?
Enterprises Consultation Files and control minutes	Have the observations of the central contracts control board (CCCB) been taken into account?
Regulation instrument	Was the published Enterprises Consultation Files regulated? If yes, did the Project Owner comply with the regulation instrument?

II.2 VERIFICATION OF AWARD LEGALITY OF A CONTRACT AWARDED BY INVITATION TO TENDER

A contract award is an award procedure stage of a contract during which the best bidder is chosen following DCE evaluation criteria to execute the said contract

II.2.1 The prerequisites to the verification of an award

a. The case of invitations to tender in two stages

Check-points	Controller's check-list
Existence of documents	Is there proof of the publication of the tender notice?
	The excerpt of bids registration register?
	The Tender File and its addenda if applicable?
	Bidders administrative, technical and financial bids?
	The minutes of administrative and technical bids opening session?
	Bids evaluation report (administrative and technical)?
	The minutes of the review session of bids evaluation report (administrative and technical)?
	The publication of the results of technical bids evaluation
	The minutes of financial bids opening session?
	The minutes of the review session of bids evaluation report (financial)?
	Minutes of negotiations if applicable?
	The TB award proposal
	The opinion of the Central Contracts Control Board, if applicable
	The decision and award release?
	The reports (opening, evaluation sub-committee, review of technical report, review of financial report) of the Independent Observer for contracts above 50 000 000 CFAF?

b. The case of invitations to tender in one stage

Check-points	Controller's check-list
Existence of documents	Is there proof of the publication of the tender notice?
	The excerpt of bids registration register?
	The Tender File and its eventual addenda?
	Bidders' administrative, technical and financial bids?
	The minutes of bids opening session?
	Bids evaluation report?
	The minutes of the review session of bids evaluation report?
	Minutes of negotiations if applicable?
	The TB award proposal.
	The opinion of the Central Contracts Control Board, if applicable.
	The decision and award release?
	The reports (opening, evaluation sub-committee, review of technical report, review of financial report) of the Independent Observer for contracts above 50 000 000 CFAF?

c. The case of a request for quotation

Check-points	Controller's check-list
Existence of documents	The excerpt of bids register?
	The Consultation File and its eventual addenda?
	Bidders' administrative, technical and financial bids?
	The minutes of bids opening session and award?
	Minutes of negotiations if applicable?
	The TB award proposal
	The decision and award release?

II.2.2. Verification of compliance with a contract award procedure

a. Verification of award procedure for a two-stage opening invitation to tender

Check-points	Controller's check-list
	Has the board received bids latest 1 hour after submission deadline?

Minutes of the opening of administrative and technical bids	Was the opening (of the two stages) done in the presence of the secretary and chairperson?
	Is the bidders' attendance sheet signed at the opening of the two stages?
	Were the sealed sample financial bids handed to the ARMP agent on the spot?
	Is the evaluation sub-committee appointed on the spot?
Minutes of the review and validation of technical bids evaluation report	Are the results of validated technical evaluation transmitted to the Project Owner to inform bidders?
Result of technical evaluation	Has the Project Owner published technical evaluation results in the Contracts logbook (JDM)?
Minutes of financial bids opening	Are they only qualified bidders who took part in the financial bids opening?
	Has the same evaluation sub-committee been renewed for financial evaluation?
Minutes of review and validation	Have the results of the validated financial evaluation transmitted to the competent Project Owner?
Bids evaluation deadline	Is it 15 days for Invitation to Tender in 2 stages and 21 for complex projects Invitation to Tender
Transmission letter of the file to the CCCB (Central Contracts Control Board)	Has the PO transmitted the proposal (consultation File of Enterprises) to the CCCB (Central Contracts Control Board) if applicable?
Minutes of file review by the Central Contracts Control Board	Has the Central Contracts Control Board reviewed the file?
Opinion of the Central Contracts Control Board	Has the Central Contracts Control Board transmitted its report to the PO?
Taking into account the observations of the Central Contracts Control Board	Has the Project Owner taken into account the observations of the Central Contracts Control Board?
Arbitration of the Authority in charge of Public Contracts/Board of Directors	Are disagreements handled in accordance with the regulation?
Publication of award results	Is the decision and award release signed and published by the Project Owner?

b. Verification of award procedure for a one-stage opening invitations to tender

Check-points	Controller's check-list
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Minutes of bids opening	Has the board received bids latest (1) hour after submission time limit?
	Is the opening at least done in the presence of the secretary and chairperson?
	Is the bidders' attendance sheet signed at the opening?
	Is the evaluation sub-committee appointed on the spot?
Bids evaluation deadline	Is it 10 days for Invitation to Tender in 1 stage and 21 for complex projects Invitation to Tender
Minutes review and validation of evaluation report	Has the validated report of the evaluation sub-committee been transmitted to the Project Owner for the publication of result?
Transmission letter of the file to the CCCB (Central Contracts Control Board)	Has the Project Owner transmitted the proposal to the CCCB, if applicable?
Minutes of file review by the Central Contracts Control Board	Has the Central Contracts Control Board (CCCB) reviewed the file?
Opinion of the CCCB	Has the CCCB transmitted its report to the PO?
Taking into account the observations of the CCCB	Has the PO taken into account the observations of the CCCB?
Arbitration of the Authority in charge of Public Contracts/Board of Directors	Are disagreements handled in accordance with the regulations?
Publication of award results	Are the decisions and award release signed and published by the Project Owner?

c. Verification of award procedure for requests for quotation

Check-points	Controller's check-list
Minutes of bids opening	Has the Board received bids latest 1 hour after submission time limit?
	Is the opening at least done in the presence of the secretary and chairperson?
	Is the bidders' attendance sheet signed at the opening?
	Is the award done on the spot?
Publication of award results	Has the award proposal been done to the Project Owner?
	Are the decisions and award release signed and published by the Project Owner?

II.2.3. Verification of bids evaluation quality

a. Verification of bids evaluation for works, supplies and quantifiable services invitations to tender



Check-points	Controller's check-list
Consultation Files/Minutes/Report of the Evaluation Sub- committee	Is the award method that of the Consultation File?
	Are the eliminatory criteria applied those of the Consultation File?
	Is the evaluation grid used that of the Consultation File put at the disposal of bidders?
	Are marking yes/no justified each time? Are the totals exact?
	Are the marking justifications of each criteria objective?
	Is the report signed by all the members? If yes, is there a separated note of non-signatory members?
Financial bids	Is there a difference between unit prices in figures and those in words?
	Does the Detailed Quantity Estimate of technically qualified bidders have calculation errors?
	Have the conditions of rejection of bids deemed abnormally low been respected if applicable?
	Is the financial bid proposed for award pertinent (technically qualified and lowest bidder)?

b. Verification of the evaluation of bids for invitations to tender of non-quantifiable services including intellectual services

Check-points	Controller's check-list
Consultation File/Minutes/Report of the Evaluation Sub-committee	Is the award method that of the Consultation File?
	Are the eliminatory criteria applied those of the Consultation File?
	Is the evaluation grid used that of the Consultation File put at the disposal of bidders?
	Are points justified each time? Are the totals accurate?
	Are the marking justifications of each criteria objective?
	Is the report signed by all the members? If yes, is there a separated note of non-signatory members?
Financial bids	Is there a difference between unit prices in figures and those in words?

	Is the marking formula of financial bids in conformity with that of the Consultation File?
	Does the Detailed Quantity Estimate of technically qualified bidders have calculation errors?
	Are technical marks well reported in the overall marking?
	Is the overall marking formula in conformity with that of the Consultation File?
	Have the conditions of rejection of bids deemed abnormally low been respected if applicable?
	Is the financial bid proposed for award pertinent (technically qualified and best bidder)?

II.3. VERIFICATION OF CONFORMITY OF A CONTRACT WITH CONTRACTUAL DOCUMENTS

II.3.1. Prerequisites to verify the content of the different types of contracts

Check-points	Controller's check-list
The existence of documents	The proof of financing?
	The Tender File and its addenda if applicable?
	Minutes of the tenders board? And control board if applicable?
	Minutes of negotiations if applicable?
	The decision and award release, and proof of their publication?
	Bid of the successful bidder?
	Report of the bid evaluation sub-committee
	The contract proper?

II.3.2. Verification of compliance with a contract signing procedure

The signing procedure of a contract starts after the publication of results and ends at its notification.

Check-points	Controller's check-list
Signature	Is the contract subscribed?

	Has the affixing of the financial visa, if required, been done?	
	Is the contract signed by the Project Owner?	
	Is the contract notified?	
Compliance with contracting deadlines	Signing and publication of results by the Project Owner	5 days?
	Withdrawal of bids by unsuccessful bidders	15 days?
	Notification of the decision to the successful bidder	72 hours?
	Subscription to the contract by the successful bidder	15 days?
	Budget visa of the Finance Controller	3 days?
	Signing after subscription	5 days?
	Notification of a contract after signature	5 days?

II.3.3 Verification of contract content in conformity with the Consultation Files and bids

a. Verification of front pages and signatures

Check-points	Controller's check-list
Front page	Is the number, subject, Project Owner, holder, amount, execution deadline and financing of the contract inserted in the front page of the contract?
Signature	Has the contract been signed and dated by the authorised parties?
Budget visa	Does the visa of the finance controller exist?

b. Verification of Part 1: the Special Administrative Clauses (SAC)

Verify that:

- ✓ The SAC of the contract is in conformity with that of the DCE.
- ✓ The data provided is in conformity with the successful bidder's bid, the SCA (evaluation sub-committee) report and with the DCE (Consultation File).

c. Verification of Part 2: the STC/DF/ToR

Verify that the Special Technical Clauses, the Supply Specification, and the Terms of Reference of the contract are in conformity with those of the DCE

d. Verification of Part 3: BPU

Verify that:

- ✓ The Unit Price Schedule (**BPU**) of the contract is in conformity with that of the DCE.
- ✓ The data provided are in conformity with the bid of the successful bidder and in the SCA (evaluation sub-committee) report.

e. Verification of Part 4: DQE

Verify that:

- ✓ The DQE (Detailed Quantity and Estimate) of the contract is in conformity with that of the DCE.
- ✓ The data provided are in conformity with the bid of the successful bidder, the SCA (evaluation sub-committee) report.

N.B.:

- **for contracts financed by national and international donors, the controller shall ensure that the ANO (Non-Objection Opinion) has been obtained at each stage of the procedure where they are required;**
- **For the cases of awards having been subject to appeals, make sure that the Project Owner has complied with the regulation instrument or the decision of the Authority in charge of Public Contracts/Board of Directors if applicable.**

II. 4 VERIFICATION OF AN AMENDMENT AWARD LEGALITY

II.4.1. Prerequisites to an amendment award legality

An amendment (additional clause) is a contractual instrument amending or supplementing certain clauses of the initial contract to adapt it to events that occurred after it was signed.

Check-points	Controller's check-list
Existence of documents	The introductory note of the Project Owner?
	The initial contract and all the amendments already signed?
	Related Administrative Orders (OS)
	The minutes of the review session by the Tenders board?
	The minutes of the review session by the central control board, if applicable?
	Special waiver for amendments of more than 30%?
	The report of the Independent Observer for contracts relating to Invitation to Tender which cumulative amount of lots is above or equal to 50 million CFAF.
	Minutes of negotiations if applicable?

Apart from documents mentioned above, the availability of the following documents per type of amendment is necessary to complete the prerequisites.

Types of amendment	Controller's check-list
Addendum for change of paying bank	The attestation of non-indebtedness issued by the former bank?
	The attestation of paying bank issued by the new bank?
Amendment for additional services	Financing justifications?
	The technical opinion of the Project Manager and/or Contract Engineer?
	Prior studies?
	The STC/ToR/DF of additional services, if applicable?
Amendment for deadline extension	Financing justifications? If applicable
	The technical opinion of the Project Manager and/or Contract Engineer?
Amendment for the validation of new prices	Prior studies?
	The technical opinion of the Project Manager and/or Contract Engineer?
	Financing justifications? If applicable
	Schedule of unit prices and sub-details of new prices?
	the STC/ToR/DF of new prices, if applicable.
Addendum for technical specifications modification	Prior studies?
	The technical opinion of the Project Manager and/or Contract Engineer?
	The new STC/ToR/DF of services?
Amendment for the modification of budget head	Excerpt of the Annual Work Plan (PTA) or of the new budget adopted by the Board of Directors?
Amendment for the modification of personnel	The CV and certificates of the new staff?
	The technical opinion of the Project Manager and/or Contract Engineer?

II.4.2. Verification of signing procedure compliance per type of amendment

a. Amendment of at most 10% of initial contract amount

Check-points	Controller's check-list
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OS:	Has the Administrative Order prescribing the services subject of the addendum been notified?
Letter of referral of the TB	Has the Project Owner transmitted the file to the Board?
Minutes of draft amendment review	Has the Board reviewed the file?
Amendment	Has the PO taken into account the observations of the Board?
Arbitration of the Authority in charge of Public Contracts (ACMP)/Board of Directors(CA)	Are disagreements handled in accordance with the regulations?

b. Amendment between 10% and 30% overrun of initial contract amount

Check-points	Controller's check-list
Introductory note	Is the introductory note signed by the Project Owner?
Letter of referral of the TB	Has the Project Owner transmitted the file to the Board?
Minutes of draft amendment review	Has the Board reviewed the file?
Amendment	Has the PO taken into account the observations of the Board?
Administrative Order (OS):	Has the start-off Administrative Order been notified after signature of the amendment?
Arbitration of the ACMP/CA	Are disagreements handled in accordance with the regulations?

c. Amendment of more than 30% overrun of the amount of the initial contract or of the ceiling fixed by the Board of Directors (CA)

Such an amendment, if applicable requires a special dispensation of the ACMP/CA (Authority in charge of Public Contracts/Board of Directors)

NB : As concerns the other types of amendments (change of paying bank, deadline extension, validation of new prices, modification of technical specifications, modification of budget head, modification of staff) the verification of the procedure shall be carried out by the expert.

II.4.3. Verification of the conformity of the content of an amendment

Check-points	Controller's check-list
Amendment for change of paying bank	Is the former account really that which features on the non-indebtedness issued by the bank?

	Is the new account that which features in the new domiciliation?
	Is the new bank authorized by the MINFI?
Amendment for additional services	Does the estimate of services feature in the amendment? Is it exact?
	Is the service of the same nature as that of the initial contract?
	Is there conformity between the prices and the service?
Amendment for deadline extension	Is the deadline in conformity with that of the initial contract? Is it justified?
	Does the extension induce additional services? If yes, does the estimate exist?
	Is there conformity between the prices and the service?
Amendment for the validation of new prices	Are the reasons for the modification of the prices pertinent?
	Do they generate additional services?
Modification of technical specifications	Are the reasons for the modification of the DF pertinent?
	Does the new equipment lead to cost variation? If yes, is the new financing attestation issued?
Amendment for the modification of budget head	Is there any new budget head?
Amendment for the modification of personnel	Is the modification/change of personnel justified?
	Are the qualifications of the new staff at least equivalent to those of the former?

N.B.: Art 130 (2) and (3) of the PCC

- However, the amendments may not change the purpose, the allottee, the payment currency, or the price revision or updating formula.

- The amendments shall be examined and adopted by the tenders board having jurisdiction over the initial contract.



CHAPTER III: CONTROL OF EXCEPTIONAL PROCEDURES

III.1. THE PREREQUISITES TO THE CONTROL OF A MUTUAL AGREEMENT PROCEDURE

Check-points	Controller's check-list
Existence of documents	The authorisation for mutual agreement been issued by the Authority in charge of Public Contracts/Chairperson of the Board of Directors)?
	The introductory note of the Project Owner concerned?
	The contract?
	The DCE (Consultation File)?
	The bids of enterprises consulted?
	The proof of availability of funding?
	The prior studies or maturity visa?
	The Contracts award plan?
	The bids evaluation report?
	The minutes of the review session by the Tenders Board?
	The minutes of the review session by the Central Control Board? If applicable
	The report of the Independent Observer for contracts which amount is above or equal to 50 million CFAF?
	minutes of negotiations if applicable?
	The decision and award release?

III.2. VERIFICATION OF COMPLIANCE WITH THE PROCEDURE FOR SIGNING A MUTUAL AGREEMENT CONTRACT

Check-points	Controller's check-list
Authorisation for mutual agreement	Has the authorisation for mutual agreement of the ACMP/PCA been obtained before signature of the contract?
Letter of invitation to tender?	Has the PO consulted the consultant(s)/enterprises?
Bids of enterprises	Are bids compliant with the DCE?
Bids evaluation report	Has the evaluation report been prepared?
Letter of referral of the TB	Has the PO transmitted the file to the Board?
Minutes of review by the TB	Has the Board reviewed the file?
Minutes of review by the CCCB	Has the Central Board reviewed the file? If applicable

Contract	Has the PO taken into account the observations of the Board?
Arbitration of the ACMP/CA	Are disagreements handled in accordance with the regulation?
Publication of results	Has the PO published the award decision?
Notification	Has the PO notified the contract within the required deadline?

III.3. VERIFICATION OF THE CONFORMITY OF THE CONTENT OF A MUTUAL AGREEMENT CONTRACT

This verification is similar to the one done in point II.2. However, the following points are to be verified.

III.3.1. Verification of front pages and signatures

Check-points	Controller's check-list
Front page	Is the number, subject, Project Owner, holder, amount, execution deadline and financing of the contract inserted in the front page of the contract?
Signature	Has the contract been signed and dated by the authorised parties?
Budget visa	Does it exist?

III.3.2. Verification of Part 1: the Special Administrative Clauses (SAC)

Verify that;

- ✓ The Special Administrative Clauses C of the contract are in conformity with those of the DCE.
- ✓ The data provided is in conformity with the successful tenderer's bid, the evaluation sub-committee's (SCA) report and the Consultation File (DCE).

III.3.3. Verification of Part 2: the Special Technical Clauses (STC)/ Description of the supply (DF)/Terms of Reference (ToR)

Verify that the STC/DF/ToR of the contract is/are in conformity with that/those of the DCE.

III.3.4. Verification of Part 3: unit price schedule (BPU)

Verify that;

- ✓ The **BPU** of the contract is in conformity with that of the DCE.
- ✓ The data provided is in conformity with the successful tenderer's bid, the bid evaluation sub-committee (SCAO) report.

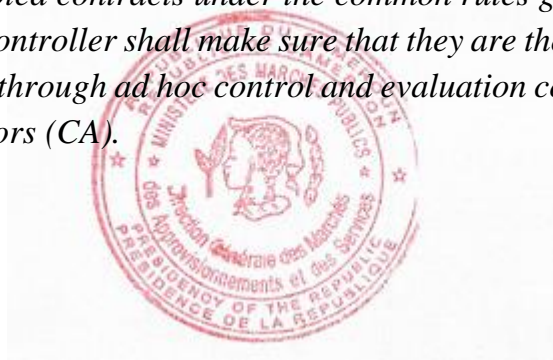
III.3.5. Verification of Part 4: DQE

Verify that;

- ✓ The Detailed Quantity and Estimate (DQE) of the contract is in conformity with that of the DCE.
- ✓ The data provided is in conformity with the successful tenderer's bid, the evaluation sub-committee's (SCA) report.

N.B.:

- *for contracts financed by national and international donors, the controller shall make sure that the Non-Objection Opinion (ANO) have been obtained at each stage of the procedure where they are required;*
- *For the cases of awards having been the subject of appeals, make sure that the PO has complied with the regulation instrument or decision of the ACMP/CA if applicable;*
- *As concerns adapted contracts under the common rules governing contracts of public enterprises, the controller shall make sure that they are the subject of systematic audits and twice-yearly through ad hoc control and evaluation committees put in place by the Boards of Directors (CA).*



CHAPTER IV

Recommendations

Contracts award controls are systematically subject to reports sent to the Authority in charge of Public Contracts, who may copy them to the Public Contracts Regulatory Body, Project Owners/Delegated Project Owners, Boards of Directors of Public Enterprises and other relevant Authorities of the State.

These reports are accompanied by recommendations, which may target, procedure-related sanctions carried out in violation of the regulation, or sanctions against stakeholders on the one hand and proposals of improvement or reforms on the other hand.

IV.1. RECOMMENDATIONS FOR PROCEDURES-RELATED SANCTIONS

These are remedial measures or procedures reform, which were carried out in violation of the regulation or Consultation Files. They may focus notably on:

- the amendments of tender notice and award releases;
- compliance with procedures and regulatory deadlines;
- the observation of jurisdiction thresholds of tenders boards;
- the prevention of the splitting of public contracts;
- the transmission of public contracts documents;
- the consideration of technical opinions of public contracts award and control bodies;
- the use of public contracts standard documents;
- the execution of the Independent Observer's missions;
- taking precautionary measures, in the event of procedures deemed illegal, pending the findings of the necessary investigations and the decision of the Authority in charge of public contracts.
- Adequacy of contracts with the DCE and award decisions;
- the re-examination of bids in order to re-award contracts;
- the cancellation of an irregular contracts award procedure;
- the correction of provisions of a signed contract;
- Etc

IV.2. RECOMMENDATIONS FOR SANCTION AGAINST STAKEHOLDERS

IV.2.1. Against stakeholders of the public sector

It is a matter of proposing sanctions against stakeholders or public employees involved in whatever capacity in the chain of public contracts controlled and found guilty of one of the

following proven acts within the meaning of the provisions of Articles 197 to 200 of the Public Contracts Code, namely:

- The acts of corruption;
- Fraudulent schemes;
- Collusive practices;
- Coercive practices;
- Obstructive practices;
- Insider trading;
- Conflicts of interest;
- Complicities;
- etc.



These sanctions may consist in banning from the Public Contracts system for a period not exceeding **two (2) years**, without prejudice of sanctions provided for by laws and regulations in force in accordance with the provisions of **Article 195 paragraph 2 of the Public Contracts Code**.

IV.2.2. The sanctions applicable to private sector stakeholders

The controller may equally propose to the Authority in charge of Public Contracts, as precautionary measure, to take a decision banning from bidding, for a period not exceeding two (2) years, every bidder or administration's contracting partner guilty of influence peddling, conflicts of interest, insider trading, complicity, fraud, corruption or production of fake documents in his bid, without prejudice to court actions that may be launched against him.

Similarly, the administration's contracting partner is liable, upon the decision of the Authority in charge of Public Contracts and after consultation, if applicable, of the public contracts regulatory body, to the sanctions enumerated in **paragraph 2** of Article 195 as follows:

- a. the confiscation of the guarantees provided by the offender within the framework of the incriminated tender procedures;
- b. exclusion from public procurement for a specific period depending on the seriousness of the offence;
- c. withdrawal of the grading certificate;
- d. final exclusion may be pronounced by the competent jurisdictions in the event of repeated violations of public contracts regulations by the same natural person or legal entity.

It should equally be noted that with regard to stakeholders who distinguished themselves positively, that is those who conducted contracts award procedures in strict compliance of public procurement basic principles, the controller shall recommend to the Authority in

charge of Public Contracts (ACMP) positive sanctions such as letters of congratulations and of encouragement letters or bonuses.

IV.3. RECOMMENDATIONS FOR IMPROVEMENT MEASURES OR REFORMS

Controls may lead to findings of recurring malfunctions due either to regulatory or legal gaps or shortcomings. Some breaches observed may equally arise from the misappreciation of regulatory instruments or public contracts award procedures. If applicable, the report shall include recommendations or suggestions aimed at proposing actions concerning capacity building, circular-letters or other appropriate instruments.



CONCLUSION

In a nutshell, if this guide enables the user, better still the public contracts award controller to have essential tools to successfully carry out the control of contracts award procedures, it should be mentioned that all the elements identified are not exhaustive, the other activities or tasks not provided for in this document shall ensue from the experience that each user would have accumulated during the repeated exercise of controls on the field.

However, it is not superfluous to indicate that the controller, apart from verifying procedures, shall equally be interested in evaluating the environment or working conditions of contracts award bodies, in order to be able to say whether or not they are appropriate to promote respect of the fundamental principles of public procurement. Within this framework, he shall notably control:

The working conditions of the Tenders Boards and other bodies (offices, operating budgets, supplies and furniture, archiving conditions, reprographic equipment, etc);

The relationship between Project Owners and Tenders Board/Central Contracts Control Board;

The regularity or not of the payment of allowances;

The support staff;

Etc.

