Opportunities for Sustainable Public Procurement in Mozambique

Martin Dietrich Brauch

December 2012

A preliminary assessment of the legal framework governing public procurement in Mozambique from a sustainable development perspective
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Introduction

Public procurement—the processes used by governments for the contracting of goods, services and construction works—can promote sustainability and green growth by providing incentives for investment, innovation and scaling of sustainable enterprises, goods, services and infrastructure across the public and private sectors. Public procurement that includes environmental, economic and social sustainability criteria is often referred to as “green” procurement or sustainable public procurement (SPP).

Although developed countries have taken the lead in promoting SPP, many developing country national and subnational governments are also designing and implementing SPP programs, often in partnership with international development organizations and research institutes. As part of its research on SPP, the International Institute for Sustainable Development (IISD) has studied initiatives and supported policymakers in Chile (Weller, Claro & Blanco, 2008), Ghana (Liebert, 2012), India (The Energy and Resources Institute (TERI), 2008), South Africa (Hanks, Davies & Perera, 2008), the State of Sao Paulo, Brazil (Brauch, 2012), and Vietnam (Hoang, Do & Perera, 2009).

In assessing a country’s efforts to integrate sustainability into its procurement policies, a starting point is the domestic legal framework that governs procurement. A legal framework that consciously takes sustainability into account is the foundation on which effective SPP policies and practices are built.

This commentary presents the results of a preliminary assessment of the potential of Mozambique’s “Regulation on Contracting of Public Works, Goods and Services” (Decree No. 15 of 24 May 2010) to support sustainable development and green growth. It contains a complete English translation of the Regulation and presents commentary on its provisions that are or could become most relevant to promoting SPP in Mozambique.

The following analysis is intended to inspire conversation with policymakers and procurement specialists, both in Mozambique and abroad, on how the Mozambican legal framework on public procurement can promote sustainability, whether through a sustainability-oriented interpretation of its current language or through legislative reform. Considering that Mozambique’s Regulation on public procurement does not expressly take sustainability into account, this exercise is an essential starting point for discussions on how to better integrate sustainability into public procurement laws, policies and practices in Mozambique.
Regulation on Contracting of Public Works, Goods and Services
(Decree No. 15 of 24 May 2010)

COUNCIL OF MINISTERS
Decree No. 15/2010
Of May 24

Considering the need to accord greater swiftness and flexibility to the contracting procedures for public works, goods, and services by organs and institutions of the State, including State agencies and enterprises, in the use of powers conferred by paragraph No. 1 of Article 67 of Law No. 9/2002, of February 12 — SISTAFE Law, the Council of Ministers decrees:

The Decree and the Regulation contained in the annex include only one mention of the environment (article 37, number 4, item j), and no mention of development, whether sustainable or not. As the preamble of the decree mentions the need to accord swiftness and flexibility in public procurement, it should also expressly take into account the role of public procurement as a tool to promote national development and the three pillars of sustainable development.

ARTICLE 1
The Regulation on Contracting of Public Works, Goods and by the State, in the Annex to this Decree, of which it constitutes integral part, is hereby approved.

ARTICLE 2
It falls within the competence of the Ministers who supervise the areas of Finance, Industry and Trade, Public Works and Housing, Health and Education, to approve, by joint Diplomas, the specific Tender Documents and respective price review formulas.

While standardization and of Tender Documents has a strong positive aspect regarding harmonization of policies, procuring entities within the Government of Mozambique could benefit from more freedom and flexibility to draft the Tender Documents, without having to strictly follow the Ministry-approved standards; they would thus be able to better adapt them to their specific situations and to include relevant sustainability aspects in them.

ARTICLE 3
It falls within the competence of the Minister who supervises the area of Finances to ensure the implementation of this Decree.

ARTICLE 4
Decree No. 54/2005, of December 13, is hereby revoked.

ARTICLE 5
This Decree enters into force 90 days after the date of its publication.

CONSELHO DE MINISTROS
Decreto No. 15/2010
de 24 de Maio

Havendo necessidade de conferir maior celeridade e flexibilidade aos procedimentos de contratação de empreitada de obras públicas, fornecimento de bens e prestação de serviços para os órgãos e instituições do Estado, incluindo autarquias e empresas do Estado, no uso das competências que lhe são atribuídas pelo no. 1 do artigo 67 da Lei No. 9/2002, de 12 de Fevereiro — Lei do SISTAFE, o Conselho de Ministros decreta:

ARTIGO 1
É aprovado o Regulamento de Contratação de Empreitada de Obras Públicas, Fornecimento de Bens e Prestação de Serviços ao Estado, anexo ao presente Decreto, dele fazendo parte integrante.

ARTIGO 2
Compete aos Ministros que superintendem as áreas das Finanças, Indústria e Comércio, Obras Públicas e Habitação, Saúde e Educação, aprovar, por Diplomas conjuntos, os Documentos de Concurso específicos e respectivas fórmulas de revisão de preços.

ARTIGO 3
Compete ao Ministro que superintende a área das Finanças garantir a implementação do presente Decreto.

ARTIGO 4
É revogado o Decreto No. 54/2005, de 13 de Dezembro.

ARTIGO 5
O presente Decreto entra em vigor noventa dias após a data da sua publicação.
Approved by the Council of Ministers on April 20, 2010.

Be it published.

The Prime Minister, Aires Bonifácio Baptista Ali.

Aprovado pelo Conselho de Ministros, aos 20 de Abril de 2010.

Publique-se.


Regulation on Contracting of Public Works, Goods and Services by the State

CHAPTER I
General Provisions

SECTION 1
Common Part

ARTICLE 1
(Object)

1. This Regulation establishes the legal regime applicable to the contracting of public works, goods, and services by the State, including those of leasing, consulting, and concessions.

2. Regarding contracting whose object is, simultaneously, public works, goods, services and leasing, the regime of this Regulation shall apply to the portion of the object that has greater economic magnitude.

ARTICLE 2
(Scope of Application)

1. This Regulation applies to all state bodies and institutions up to the lowest level that has a budget to execute, including state agencies and enterprises.

2. This Regulation does not apply to contracts between state agencies and institutions.

ARTICLE 3
(Definitions)

For the purposes of this Regulation, the following terms and expressions are so defined:

Even though this article lacks some of the definitions used elsewhere in the Regulation, and also includes definitions that do not appear in the Regulation, definitions are generally used in a consistent manner. In addition to the clear and mostly concise language used, this consistent use of definitions makes it easier for procurers to apply the Regulation.

Definitions relevant to sustainability and its three pillars, including the definition of sustainable public procurement or contracting, could be included in this article, to ensure the proper interpretation and realization of the sustainability aspects in procurement proceedings under this Regulation.
a) Award: Administrative act by which the Contracting Entity selects the winning proposal for subsequent contracting;

b) Tender Notice: Communication on the opening of a tender, by means of the press, namely in the newspaper with the largest circulation in the country, and a tender document; other adequate means of communication that are easily accessible by the target public may be used;

c) Competent Authority: Agent that represents the Contracting Authority, formally designated, with powers to practice the acts regarding the contracting procedures defined in this Regulation;

d) Goods: Objects of whatever nature, the value of which also includes services accessory to their provision, as long as the value of these services does not exceed that of the goods to be supplied;

The definition of Goods could be amended to emphasize that the assessment of their value must take into account their social and environmental impacts and costs throughout their life cycle.

e) Specifications: Documents that contain the general and specific legal clauses, the technical specifications and the tender program, which inform the obligations of the Contracting Entity and of the Contracted Party;

f) Concession: The granting, for a determinate period, of the exploitation of an activity within the public domain, either existing or to be developed;

g) Concession of Construction Works: Granting of the right to build and explore temporarily goods and services in the public domain, with their delivery at the end of the corresponding concession contract;

h) Consultant: A natural or legal person, whether national or foreign, which renders services of an intellectual nature or advisory services;

i) Contracted Party: Winning tenderer, to which the construction work, the supply of goods or the rendering of services is awarded;

j) Tender Documents: A set of documents consisting of the Specifications, the Tender Project and the Tender Program, which must contain the legal, economic, financial and technical qualification requirements that govern the tender and the corresponding contracting, in accordance with the provisions of Article 65 of this Regulation;

Given their normative importance in all procurement procedures in Mozambique, the definition of Tender Documents should allow for the possibility of including sustainability criteria.

k) Public Works Contracting or, simply, Public Works: Works of construction, reconstruction, expansion, modification, adaptation, conservation, restoration, repair or rehabilitation of state-owned buildings or real estate;

l) Public Works Contractor: Natural or legal person, whether national or foreign, contracted to execute public works;

The definition of Goods could be amended to emphasize that the assessment of their value must take into account their social and environmental impacts and costs throughout their life cycle.
m) Grantor of the Concession: State organ or institution that promotes the opening of the tender and enters into the concession agreement;

n) Technical Specifications: A set of technical prescriptions contained in the Tender Documents that define the characteristics required for the contracting of public works, the supply of goods, or the rendering of services, and which allow their performance to correspond to the purpose for which they are destined by the Contracting Entity;

The definition of Technical Specifications could include a reference to the need for specifications to cover the sustainability characteristics of goods, services and construction works.

p) Supplier: Natural or legal person, whether national or foreign, contracted to supply goods and services to the State;

q) Jury: Collegiate body that ensures compliance with all the procedures regarding public contracting;

r) Medium Enterprise: Enterprise whose number of employees varies from 50 to 100, and whose annual volume of business is higher than MT14,700,000 and lower than MT29,970,000, with no more than 25 per cent of its share capital owned by a large enterprise or by the State;

s) Micro Enterprise: Enterprise whose number of employees do not exceed four employers and MT1,200,000, respectively, with less than 25 per cent of its share capital owned by a large enterprise or by the State;

t) Small Enterprise: Enterprise whose number of employees varies from five to forty-nine, and whose annual volume of business is higher than MT1,200,000 and lower than MT14,700,000.00, with no more than 25 per cent of its share capital owned by a large enterprise or by the State;

The Regulation clearly defines micro, small and medium enterprises, thus allowing specific privileges to be granted to them, as will be analyzed further below.

u) Tender Program: Document containing all the provisions and information to tenderers, required for the preparation and submission of proposals;

v) Project: A set of written pieces and drawings that constitute, along with the Tender Program and the Specifications, the process to be presented for tender, for the granting of public works or of supply, and to provide all elements necessary to the proper performance of the contract;

w) Proposal: Document by which the tenderer represents to the Contracting Entity its willingness to contract, and indicates the conditions under which it is willing to contract;

x) Services: Activity in which the Contracted Party provides to the Contracting Entity the results of its intellectual or manual labour;

The Regulation clearly defines micro, small and medium enterprises, thus allowing specific privileges to be granted to them, as will be analyzed further below.

u) Programa de Concurso: Documento que contém todas as disposições e informações aos concorrentes, necessárias à elaboração e apresentação das propostas;

v) Projecto: Conjunto de peças escritas e desenhadas a constituir, juntamente com o Programa do Concurso e o Caderno de Encargos, o processo a apresentar a concurso, para adjudicação de empreitada, ou de fornecimento e a facultar todos os elementos necessários à boa execução dos trabalhos;

w) Proposta: documento pelo qual o concorrente manifesta à Entidade Contratante a vontade de contratar e indica as condições em que se dispõe a fazê-lo;

x) Serviços: Actividade em que a contratada fornece à Entidade Contratante o resultado de seu trabalho intelectual ou físico;

1 Mozambican Metical: At time of writing CAD$1 = roughly MT30.34
y) Consulting Services: Activity, including advisory activity, in which the Contracting Entity is supplied with the results of primarily intellectual labour;

z) Functional Unit of Procurement Supervision: Body with the competence to coordinate and supervise all the activity relating to public contracting, management of the centralized national system of data and information, and capacity-building programs on contracting;

aa) Managing Unit of Procurement Execution: A unit integrated into each state body or institution, including State agencies and enterprises that may have a budget to execute, in charge of the management of purchasing processes, from planning and preparation stages, as well as contract performance, under the supervision of the Competent Authority;

These clear definitions of Functional Unit of Procurement Supervision and of Managing Units of Procurement Execution are key to understanding their chief importance in the execution and supervision of procurement processes in Mozambique.

bb) Lease: Contract by which the contracted party is obligated to provide to the Contracting Entity the temporary enjoyment of property, which can be:

i. Lease of immovable property: if the property is real estate; and

ii. Lease of movable property: if the property is movable.

ARTICLE 4
(Principles and General Rules)

1. In implementing this Regulation the parties must comply with the principles of legality, purpose, reasonableness, proportionality, pursuit of the public interest, transparency, publicity, equality, competition, impartiality, good faith, stability, motivation, responsibility, good financial management, swiftness, and the other applicable public law principles.

This list of principles that must guide the implementation of the Regulation is welcome. In particular, the principles of purpose, reasonableness, transparency, and good financial management are closely related to sustainability. Nonetheless, a specific mention of the principle of sustainable development in this article would provide express legal grounds to support the implementation of sustainable public procurement in Mozambique.

2. The Competent Authority, on behalf of the Contracting Entity, must, for the purposes of contracting, comply with the following general rules:

a) Deconcentrating and decentralizing the implementation of this Regulation to even the lowest-ranked body or institution that has a budget to execute, except for those items in which there is an interest in ensuring the harmonization of types or scale efficiency gains, by indicating the Functional Unit of Procurement Supervision;

The principles of deconcentration and decentralization allow for a relative degree of flexibility and freedom for procurers to tailor procurement proceedings to the needs of their specific government bodies or institutions, thus making it easier for procurers to adopt sustainability criteria in specific processes.
b) Seeking to optimize the satisfaction of collective needs, both in the formation and in the performance of the contracts;

c) Acting independently, and solely and exclusively driven by the defense and pursuit of the public interest throughout the contracting procedure;

It should be made clear at some point in the Regulation that the public interest—to be sought throughout the procurement procedure and in every procurement proceeding—inherently encompasses the promotion of sustainable development in Mozambique. This could be done by including a definition of public interest, which should be non-exhaustive, given that governments tend to avoid defining it in order not to unduly restrict its meaning.

d) Determining the object, in an accurate, sufficient and clear manner, without specifications that, being excessive or unnecessary, limit competition; reference to brands is forbidden;

d) Determinar o objeto, de forma precisa, suficiente e clara, sem especificações que, por excessivas ou desnecessárias, limitem a competição, sendo proibida a referência a marcas;

While the object of contracting must certainly be accurately, sufficiently and clearly defined, and without reference to specific brands, the phrasing of this rule (intended to prohibit anticompetitive specifications) could be misinterpreted so as to make it difficult for procurers to include sustainability criteria in specifications, based on the understanding that these criteria would be excessive or unnecessary and would thus unduly limit competition. A provision could be included to make it clear that sustainability criteria shall not be deemed to be intrinsically anticompetitive.

e) Justifying the authorization to open the Tender or the Direct Contracting with the necessary reasoning regarding their economy, efficiency and effectiveness and the evaluation criteria, ensuring the selection of the proposal with the quality standards required to achieve the public interest, by adequate economic compensation, within agreed time limits;

f) Ensuring that the reasons in fact and in law for the definition of the procurement modality adopted and the corresponding acts carried out are previously indicated in writing;

g) Ensuring that the rules governing the tender and the elements underpinning it remain unchanged during its realization, except as provided in this Regulation;

h) Ensuring proper disclosure of its intention to contract;

i) Setting reasonable time limits for the preparation of proposals by potential tenderers;

j) Establishing legal, economic, financial and technical qualifications, required without distinction of all tenderers, compatible and proportional to the object of procurement, to ensure compliance with contractual obligations;

k) Affording all potential tenderers equal conditions for participation, treating all tenderers according to the same criteria;

l) Ensuring maximum participation of those interested in contracting with the Contracting Entity;
m) Ensuring careful selection of the most advantageous proposal, affording equal opportunity to tenderers through fair competition;  

m) Garantir a seleção criteriosa da proposta mais vantajosa proporcionando igualdade de oportunidade aos interessados por meio de uma competição justa;

Whether in this definition or elsewhere in the Regulation, it should be made clearer that, to determine the most advantageous proposals, criteria other than immediate cost must be considered.

n) Establishing in advance the awarding criteria and the essential conditions of the contract, and disseminating them to potential tenderers;

n) Estabelecer previamente os critérios de adjudicação e as condições essenciais do contrato, e divulgá-los pelos interessados;

o) Enabling the achievement of the objective of the contracting, with swiftness and economy, without prejudice to the safety and to the rights and security of the tenderers; and

o) Propiciar o alcance do objetivo da contratação, com celeridade e economicidade, sem prejuízo da segurança e dos direitos dos concorrentes; e

<table>
<thead>
<tr>
<th>Mentioning social, environmental and economic sustainability instead of economy in this definition would be desirable.</th>
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<tr>
<td>p) Following the rules and procedures provided for in this Regulation and other applicable legislation.</td>
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| p) Observar as regras e formalidades estabelecidas no presente Regulamento e demais legislação aplicável. |

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<tr>
<th>ARTICLE 5 (Language)</th>
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<tr>
<td>1. All documents inherent to contracting subject to the regime provided for in this Regulation must be written in the Portuguese language.</td>
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<tr>
<th>ARTIGO 5 (Língua)</th>
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<tbody>
<tr>
<td>1. Todos os documentos inerentes à contratação sujeita ao regime fixado no presente Regulamento devem ser redigidos em língua portuguesa.</td>
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1. The Contracting Authority may adopt norms other than those established in this Regulation for:

<table>
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<tr>
<th>ARTICLE 7 (General Regime)</th>
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<tbody>
<tr>
<td>The General Regime for the contracting of public works, the supply of goods and the rendering of services to the State is the Public Tender.</td>
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<tr>
<th>ARTIGO 7 (Regime Geral)</th>
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<tbody>
<tr>
<td>O Regime Geral para a contratação de empreitada de obras públicas, fornecimento de bens e prestação de serviços ao Estado é o Concurso Público.</td>
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<th>ARTIGO 8 (Regime Especial)</th>
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<tbody>
<tr>
<td>1. A Entidade Contratante pode adoptar normas distintas das definidas no presente Regulamento para:</td>
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Mandatory use of the Portuguese language, more than ensuring the use of the official language of the country, is an important factor in promoting the accessibility of procurement to national tenderers.
a) Contracting resulting from a Treaty or other form of international agreement between Mozambique and another State or international organization that requires the adoption of a specific regime; and

b) Contracting conducted under projects wholly or substantially funded with resources from funding or donation by a foreign official cooperation agency or a multilateral financial institution, when the adoption of different norms is an express condition of the agreement or contract.

2. The adoption of norms different from those of this Regulation, based on this article, which must be authorized in advance by the Minister that supervises the area of Finances.

3. The Contracting Authority must include in the notice and tender documents adopted rules that are different from those specified in this Regulation.

ARTICLE 9
(Exceptonal Regime)

1. Whenever it is convenient to the public interest and the requirements established under this Regulation are present, the Managing Unit of Procurement Execution shall, giving reasons, suggest to the Competent Authority the application of the Exceptional Regime for the contracting of public works, the supply of goods, the rendering of services, leasing and concessions.

2. The decision declaring that the requirements for contracting under the Exceptional Regime are present and determining the application of this regime to the contracting of public works, the supply of goods, the rendering of services, leasing and concession must be justified in writing by the Competent Authority.

3. The modalities of contracting under the Exceptional Regime are the following:

   a) Tender with Pre-Qualification;
   b) Limited Tender;
   c) Two-Stage Tender;
   d) Tender by Bids;
   e) Small-Scale Tender; and
   f) Direct Contracting.

4. Contracting under the Exceptional Regime is subject to the subsidiary application of the norms on Public Tender provided for in this Regulation.

a) Contratação decorrente de Tratado ou de outra forma de acordo internacional entre Moçambique e outro Estado ou organização internacional, que exija a adopção de regime específico; e

b) Contratação realizada no âmbito de projectos financiados, total ou substancialmente, com recursos provenientes de financiamento ou doação oriundos de agência oficial de cooperação estrangeira ou organismo financeiro multilateral, quando a adopção de normas distintas consiste, expressamente, como condição do respectivo acordo ou contrato.

2. A adopção de normas distintas das do presente Regulamento, com fundamento neste artigo, deve ser previamente autorizada pelo Ministro que superintende a área das Finanças.

3. A Entidade Contratante deve fazer constar no Anúncio e Documentos de Concurso as regras adaptadas que sejam distintas das definidas no presente Regulamento.

ARTIGO 9
(Regime Excepcional)

1. Sempre que se mostre conveniente ao interesse público e estejam presentes os requisitos fixados no presente Regulamento, a Unidade Gestora Executora das Aquisições deve, fundamentando, propor à Autoridade Competente a aplicação de Regime Excepcional para contratação de empreitada de obras, fornecimento de bens, prestação de serviços, locação e concessões.

2. A decisão que declara verificados os requisitos de contratação em Regime Excepcional e que determina a aplicação deste regime para contratação de empreitada de obras, fornecimento de bens, prestação de serviços, locação e concessão deve ser fundamentada por escrito pela Autoridade Competente.

3. As modalidades de contratação em Regime Excepcional são as seguintes:

   a) Concurso com Prévia Qualificação;
   b) Concurso Limitado;
   c) Concurso em Duas Etapas;
   d) Concurso por Lances;
   e) Concurso de Pequena Dimensão; e
   f) Ajuste Directo.

4. As contratações em Regime Excepcional regem-se, subsidiariamente, pelas normas do Concurso Público previstas no presente Regulamento.
The Regulation establishes three clearly defined major legal regimes for public procurement:

1. **General Regime**: The Public Tender is the standard procurement modality in Mozambique.
2. **Special Regime**: The regime for procurement based on treaties or other international agreements and for projects funded by foreign agencies or multilateral financial institutions. The Minister that supervises the area of Finances must specifically authorize procurement under this regime.
3. **Exceptional Regime**: Based on justified public interest, the Managing Unit of Procurement Execution may suggest and the Competent Authority may decide to apply this regime, giving reasons to do so in writing. There are six modalities under the Exceptional Regime:
   - Tender with Pre-Qualification
   - Limited Tender
   - Two-Stage Tender
   - Tender by Bids
   - Small-Scale Tender
   - Direct Contracting

**SECTION III**
**Contracting Entity**

**ARTICLE 10**
**(Budget for Contracting)**

The Contracting Authority may open a tender only if the contracting amount fits the Budget.

This is an important provision from the standpoint of economic sustainability, in that it aims at ensuring fiscal responsibility in government procurement.

<table>
<thead>
<tr>
<th>ARTICLE 11</th>
<th><strong>(Contracting Procedures and Requirements)</strong></th>
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<tbody>
<tr>
<td>1. The contracting procedure must be initiated by the Managing Unit of Procurement Execution, by the opening of an administrative proceeding, properly filed, numbered and containing the written authorization of the Competent Authority for its execution.</td>
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<tr>
<td>2. All documents and decisions of the administrative procedure of contracting shall be filed and properly numbered in the administrative proceeding referred to in the item above.</td>
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<th>ARTIGO 11</th>
<th><strong>(Procedimento e requisitos de contratação)</strong></th>
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<tr>
<td>1. O procedimento de contratação deve ser instaurado pela Unidade Gestora Executora das Aquisições, através da abertura de processo administrativo, devidamente autuado, numerado e contendo a autorização escrita da Autoridade Competente para sua realização.</td>
<td></td>
</tr>
<tr>
<td>2. Todos os documentos e actos decisórios do procedimento administrativo de contratação devem ser juntos e devidamente numerados no processo administrativo referido no número anterior.</td>
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**ARTICLE 12**
**(Attributions of the Competent Authority)**

1. The powers of the competent authority, on behalf of the Contracting Authority, are the following:
   - a) Indicating the specific public interest to be pursued;

The role of the Competent Authority as a representative of the Contracting Authority is significant and must be utilized in order to include sustainability aspects in procurement processes. Specifically regarding the provision above, Competent Authorities should be trained to expressly mention sustainable development as a relevant part of the public interest to be pursued in procurement.
b) Defining precisely, sufficiently and clearly the object of contracting;

In defining the object of procurement, the Competent Authority must indicate the relevant sustainability goals the process must help to attain.

c) Determining an estimate of the price of the public works, goods or services to be contracted;

d) Following the rules of this Regulation in the contracting procedure;

e) Defining, with necessary justification, the contracting modality to be adopted;

f) Waiving, in the terms provided for in this Regulation, the qualification documents;

g) Declaring that the estimated costs that will result from the contract are covered by the budget with legally applicable resources, set aside for the purposes;

h) Approving and publishing the Tender Documents and the Tender Announcement;

i) Designating the members of the Jury and indicating its President;

j) Providing clarifications to the tenderers, during the evaluation;

k) Processing and gathering evidence in complaints against the acts of the Jury;

l) Justifying the adoption of the decision criterion, when it is not that of the lowest price;

This will be of fundamental importance when taking sustainability into account, which might require the adoption of a decision criterion other than that of the lowest price.

m) Awarding the object of the contracting to the winning tenderer or, when applicable, promoting the declaration of cancellation or nullification of irregular proceedings;

n) Following the requirements for the signing of the contract and calling upon the winning tenderer to sign it; and

a) Approving the multi-annual allocation of costs, in accordance with their budget allocation, when the liabilities resulting from the contracting involve expenses in more than one fiscal year.

2. In performing its duties, the Competent Authority must allow, in particular, the principles of independence and impartiality.

Mentioning the principle of sustainable development here would be welcome.
### ARTICLE 13
**Impediments to Representing the Contracting Entity**

1. The Competent Authority is forbidden from representing the Contracting Authority when:
   
a) He or she has an interest in the contracting, on its own or as the representative or manager of someone else’s businesses;

b) His or her spouse or relative by blood or marriage, or person with whom he or she lives, has an interest in the contracting;

c) He or she has share capital in an enterprise which has an interest in the contracting or when the persons referred to in item b) of this article have share capital in such enterprise; or

d) He or she has a bond of any nature with the competitor in the contracting or has maintained a bond in any matter related to the process or its object.

2. In those cases referred to in the previous number, the forbidden persons must, as the case may be, declare their impediment or suspicion or recuse themselves pursuant to the Norms on the Execution of Public Administration Services.

### ARTICLE 14
**Attributions of the Managing Units of Procurement Execution**

1. The responsibilities of the Managing Units of Procurement Executions (MUPEs) are the management and execution of procurement processes in all phases of the contracting cycle, from the planning stage through to the acceptance of public works, goods or services and the timely performance of the contract.

2. The MUPEs are under the direct supervision of the Competent Authority.

3. In the exercise of its responsibilities and powers, the Managing Units of Procurement Execution are subject to the technical supervision of the Functional Unit of Procurement Supervision.

### ARTICLE 15
**Powers of the Managing Units of Procurement Execution**

For the performance of their duties, the Managing Units of Procurement Execution have, among other, the following powers:

a) Assessing the contracting needs of the Contracting Entity;
Assessing the procurement needs of the Contracting Entity is the first step in the preliminary phase of sustainable public procurement. It is during the need assessment phase that thought will be given for the first time to whether there really is a specific procurement need and, if so, how to best meet it, due attention being paid to sustainability aspects.

| b) Preparing and updating the contracting plan of each fiscal year; | b) Preparar e manter actualizado o plano de contratações de cada exercício; |
| c) Carrying out the annual sectoral planning of contracting; | c) Realizar a planificação sectorial anual das contratações; |
| d) Preparing the Tender Documents; | d) Elaborar os Documentos de Concurso; |

The three steps above (planning procurement, executing the plan and, in doing so, preparing specific Tender Documents) are interconnected and result directly from the prior step of needs assessment. Sustainability concerns should be a part of all documents in these steps, and most importantly the Tender Documents.

| e) Following the contracting procedures provided for in this Regulation; | e) Observar os procedimentos de contratação previstos no Regulamento; |
| f) Receiving and processing complaints and the appeals filed and ensure compliance with pertinent procedures; | f) Receber e processar as reclamações e os recursos interpostos e zelar pelo cumprimento dos procedimentos pertinentes; |
| g) Supporting and guiding the other areas of the Contracting Entity in preparing the catalog containing the technical specifications and of other documents pertinent to the contracting; | g) Apoiar e orientar as demais áreas da Entidade Contratante na elaboração do catálogo contendo as especificações técnicas e de outros documentos pertinentes à contratação; |

It is also very important to ensure that sustainability concerns appear in the technical specifications.

| h) Assisting the Jury and ensuring compliance with all pertinent procedures; | h) Prestar assistência ao Júri e zelar pelo cumprimento de todos os procedimentos pertinentes; |
| i) Submitting the contracting documentation to the Administrative Tribunal; | i) Submeter a documentação de contratação ao Tribunal Administrativo; |
| j) Providing necessary collaboration to the internal and external control bodies in carrying out inspections and audits; | j) Prestar a necessária colaboração aos órgãos de controlo interno e externo, na realização de inspeções e auditorias; |
| k) Supporting the Functional Unit of Procurement Supervision in sectoral technical matters within its competences; | k) Apoiar a Unidade Funcional de Supervisão das Aquisições em matérias técnicas sectoriais da sua competência; |
| l) Managing contracts and ensuring compliance of all procedures, including those inherent to the acceptance of the contract object; | l) Administrar os contratos e zelar pelo cumprimento de todos os procedimentos, incluindo os inerentes à recepção do objeto contratual; |

While managing contracts and monitoring their appropriate performance, including the receipt of the goods, services or construction works procured, the Managing Units of Procurement Execution must ensure that Contracted Parties comply with all sustainability-related legal standards and contractual obligations.

| m) Ensuring the adequate keeping of documents of each contracting; | m) Zelar pela adequada guarda dos documentos de cada contratação; |
| n) Proposing the implementation of training activities to the Functional Unit of Procurement Supervision; | n) Propor à Unidade Funcional de Supervisão das Aquisições a realização de ações de formação; |

Sustainable development and sustainable public procurement could be the subject matter of training activities to be suggested pursuant to this provision.

| o) Proposing the issuance or updating of contract norms or standards to the Functional Unit of Procurement Supervision; | o) Propor à Unidade Funcional de Supervisão das Aquisições a emissão ou actualização de normas de contratos; |
Whenever the Managing Units of Procurement Execution and the Functional Unit of Procurement Supervision discuss standard-form clauses or contracts, they should be encouraged to take sustainability into account by, for example, creating a standard clause on socio-environmental responsibility of contractors.

| p) Informing the Functional Unit of Procurement Supervision on any unethical practices and unlawful acts that may have occurred; |
| q) Receiving and submitting documents relating to registration in the single registry of suppliers to the Functional Unit of Procurement Supervision; |
| r) Maintaining and updating the registry of suppliers, in accordance with the guidance of the Functional Unit of Procurement Supervision; |
| s) Proposing to the Functional Unit of Procurement Supervision the inclusion, in the registry of suppliers, of suppliers forbidden from participating in the contracting process; |
| t) Submitting to the Functional Unit of Procurement Supervision the data and information needed for the constitution, maintenance and updating of statistical studies; |
| u) Maintaining appropriate information on the performance of contracts and on the conduct of suppliers, and informing the Functional Unit of Procurement Supervision where appropriate or relevant; |
| v) Supporting the Functional Unit of Procurement Supervision in whatever may be necessary to comply with this Regulation. |

The three powers above are important aspects of contract management and supervision. From a sustainability standpoint, the Managing Units of Procurement Execution should make sure to keep records and inform the Functional Unit of Procurement Supervision of the degree to which contractors comply with socio-environmental standards and performance requirements. This information will be particularly relevant in cases where government measures are needed to enforce those standards or requirements and to impose sanctions on contractors who breach them.

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**SECTION IV**

**The Jury**

**ARTICLE 16**

*(Composition of the Jury)*

The Jury is composed of a minimum of three members, qualified in the matter, of whom at least one is a civil servant linked to the Managing Unit of Procurement Execution.

While it is important that at least one member of Jury belongs to the Managing Unit of Procurement Execution, the article should offer more details on the institutional affiliations and professional qualifications of other members. For example, it would be useful if this article defined the criteria on which the number of members in a specific Jury should vary, if it ensured participation of other civil servants with experience in public procurement or from specific government bodies or ministries, and if it promoted the participation of civil society representatives.
ARTICLE 17
(Attributions of the Jury)

1. The responsibilities of the Jury include:
a) Receiving proposals of tenderers and opening them;
b) Requesting clarifications to tenderers during the evaluation of proposals on behalf of the Contracting Entity;
c) Suggesting to the Contracting Entity that it seek expert advice, when necessary;
d) Proposing changes in the initial proposals, in the Two-Stage Tender;
e) Evaluating and ranking proposals; and
f) Submitting the proposal evaluation report, with a recommendation on the award, for the decision of the Contracting Entity.

While the Jury has a limited role in including sustainability aspects in procurement, as it must comply with and ensure tenderers’ compliance with the technical specifications and other documents prepared prior to its involvement in the process, the Jury can in fact guarantee that the sustainability aspects provided for are effectively taken into account. In the evaluation and ranking of proposals and ultimately in its recommendation on the award, the Jury can highlight the weight given to sustainability in the process, in the proposals and in the decision to be made.

2. In exercising its responsibilities, the members of the Jury must follow, in particular, the principles of independence and impartiality.

ARTICLE 18
(Powers of the Jury)

1. The powers of the Jury include:
a) Deliberating in a closed meeting with the participation of the majority of its members; and
b) Deliberating by majority of the votes of members present.

2. Jury deliberations must be recorded in duly signed minutes, which shall contain the reasons and, if there is a dissenting vote of any member of the Jury, such fact must be recorded, indicating the reasons for the dissent.

3. The members of the Jury may not delegate their powers.

ARTICLE 19
(Impediments to Jury Membership)

The impediments provided for under article 13 of this Regulation shall apply to the members of the Jury.

ARTIGO 17
(Atribuições do Júri)

1. São atribuições do Júri:
a) Receber as propostas dos concorrentes e proceder à sua abertura;
b) Solicitar esclarecimentos aos concorrentes durante a avaliação das propostas em nome da Entidade Contratante;
c) Propor à Entidade Contratante a consulta a técnicos e especialistas, quando necessário;
d) Propor alterações nas propostas iniciais, no Concurso em Duas Etapas;
e) Avaliar e classificar as propostas; e
f) Remeter o relatório de avaliação das propostas, com recomendação de adjudicação, à decisão do Entidade Contratante.

While mentioning the principle of sustainable development here would be welcome.

2. No exercício das suas atribuições os membros do Júri devem observar, particularmente os princípios de independência, imparcialidade e isenção.

ARTIGO 18
(Competências do Júri)

1. São competências do Júri:
a) Deliberar em reunião reservada com a participação da maioria dos seus membros; e
b) Deliberar por maioria de votos dos membros presentes.

2. As deliberações do Júri devem ser registradas em acta devidamente assinada, dela constando a fundamentação e, havendo voto vencido de algum membro do Júri, tal facto deve ser registrado indicando as razões da discordância.

3. É vedado aos membros do Júri delegar as suas competências.

ARTIGO 19
(Impedimentos dos membros do Júri)

Aplica-se aos membros que integrem o Júri as impedimentos estabelecidos no artigo 13 do presente Regulamento.
SECTION V
The Tenderers

ARTICLE 20
(Eligibility)

Those natural or legal persons, whether national or foreign, that prove that they have the legal, economic, financial and technical qualifications and good fiscal standing, and that also meet the other requirements provided for in this Regulation, are eligible to tender for the contracting of public works, the supply of goods or the rendering of services.

ARTICLE 21
(Impediments to Participating in the Tender)

1. Proposals shall not be accepted from tenderers with respect to whom one of the following situations is verified:

a) Being a natural person convicted by a final judicial decision for any crime that may jeopardize its professional standing, for the duration of the penalty;

b) Being a natural person disciplinarily punished for a serious fault in a professional matter, for the duration of the penalty;

c) Being a person, whether natural or legal, punished by any State body or institution, with the prohibition of contracting by reason of the practice of an unlawful act in a contracting proceeding, for the duration of the penalty;

d) Being a natural person that controls, whether directly or indirectly, legal persons falling under the situations mentioned in item c);

e) Being an agent that belongs to the Contracting Entity's staff and a person responsible for a decision to be made;

f) Being a legal person controlled, whether directly or indirectly, by a person falling under the situations defined in the previous items;

g) Being a person, whether natural or legal, that has defrauded the State or involved itself in fraudulent bankruptcies of companies or yet in process of bankruptcy or judicial reorganization; and

h) Being a person, whether natural or legal, the capital of which comes from a proven unlawful source.

Limitations on eligibility to tender could be explicitly extended to forbid the acceptance of proposals from those administratively or criminally punished for breach of environmental laws and regulations.

2. The following may not participate, whether directly or indirectly, in the tender or in the contracting of public works, the supply of goods or the rendering of service:

a) The author of a project that is the object of contracting, basic or executive, whether a natural or legal person; and
b) A legal person, whether solely or through a consortium or an association, responsible for the preparation of the project or of which the project author is a manager, stockholder or owner of more than five per cent of the legal person’s share capital or the person technically responsible for the project.

3. The participation of the project author or of the legal person to which the previous number refers may be allowed in the tender of public works, or in the execution, as a consultant or technician, with the function of overseeing, supervising or managing, exclusively at the Contracting Entity’s service.

ARTICLE 22
(Legal Qualification)

1. Legal qualification is assessed by the submission of the following documents:
   a) For natural persons, a duly completed form, along with a certified photocopy of the identification document;
   b) For legal persons, a duly completed form, along with a commercial registration certificate and a public deed or equivalent document; and
   c) Tenderer’s declaration that it does not fall within any of the situations provided for in Article 21.

2. If applicable, the following must be submitted:
   a) Project of the consortium or document of the consortium already formed;
   b) Documents proving the fulfillment of other requirements provided for in specific legislation for the performance of the activity that is the object of contracting.

ARTICLE 23
(Economic and Financial Qualification)

1. Documents relating to the economic and financial situation include the following:
   a) In the case of a natural person:
      i. Periodic statement of income;
      ii. Annual statement of accounting and tax information; and
      iii. Statement that there is no judicial execution of its assets that affects its financial situation.
   b) In the case of a legal person:
      i. Periodic statement of income;
      ii. Annual declaration of accounting and tax information;
      iii. Balance sheet and accounting statements of the last fiscal year, submitted in accordance with the law;

   b) Pessoa colectiva, isoladamente ou em consórcio ou em associação, responsável pela elaboração do projeto ou da qual o autor do projecto seja dirigente, acionista ou detentor de mais de cinco por cento do capital social dessa pessoa colectiva ou responsável técnico da projecto.

3. Pode ser permitida a participação do autor do projecto ou da pessoa colectiva a que se refere o número anterior, no concurso de empreitada de obra ou prestação de serviço, ou na execução, como consultor ou técnico, com a função de fiscalizar, supervisionar ou gerir, exclusivamente ao serviço da Entidade Contratante.

ARTIGO 22
(Qualificação jurídica)

1. A qualificação jurídica afere-se pela apresentação dos seguintes documentos:
   a) Para pessoas singulares, formulário devidamente preenchido, acompanhado de fotocópia autenticada do documento de identificação;
   b) Para pessoas colectivas, formulário devidamente preenchido, acompanhado de certidão de registo comercial e escritura pública ou documento equivalente; e
   c) Declaração do concorrente de que não se encontra em qualquer das situações previstas no artigo 21.

2. Sempre que aplicável, deverá ser apresentado:
   a) Projeto do consórcio ou documento do consórcio constituído;
   b) Documentos comprovativos da preenchimento de outros requisitos estabelecidos em legislação especial para o desempenho da actividade objecto da contratação.

ARTIGO 23
(Qualificação económico-financeira)

1. São documentos relativos à situação económico-financeira:
   a) No caso de pessoa singular:
      i. Declaração periódica de rendimentos;
      ii. Declaração anual de informação contabilística e fiscal; e
      iii. Declaração de que não há execução judicial do seu património que afecte a sua situação financeira.
   b) No caso de pessoa colectiva:
      i. Declaração periódica de rendimentos;
      ii. Declaração anual de informação contabilística e fiscal;
      iii. Balanço patrimonial e demonstrações contabilísticas do último exercício fiscal, apresentado nos termos da lei;
iv. Statement that no request for bankruptcy exists against it and that it did not apply for judicial reorganization.

2. The Tender Documents may still require that the tenderer have:
   a) Revenue in activities similar to the object of contracting;
   b) Average annual revenue in the three last fiscal years of an amount equal to or higher than the amount indicated in the Tender Documents, limited to between one and three times the estimated value of the public works, goods or services that are the object of contracting;
   c) Share capital not lower than the amount indicated in the Tender Documents, or net worth equal to or higher than the amount indicated in the Tender Documents, which shall not be, in either case, higher than 10 per cent of the estimated cost of the public works, goods or services that are the object of contracting; and
   d) Confirmation of ease of access to credit in the amounts specified in the Tender Documents.

3. The economic and financial qualifications must be compatible with the costs to be borne by the tenderer and proportional to the nature and magnitude/size of the object.

4. Without prejudice to the procedures established in specific legislation in case of Tender for Concession, the share capital or the net worth indicated in the Tender Documents shall take into consideration the sum of the economic and financial costs that the concession contractor must bear in the first three years of the concession, in accordance with the budget prepared by the Granting Entity, including the price of the granting of the concession during the same period, if any.

5. The percentage to be adopted with respect to the previous number shall be determined by a joint decision of the Ministers who supervise the area that benefits from the object of contracting and the area of Finances.

ARTICLE 24
(Technical Qualification)

1. The documents relating to the technical qualification include the following:
   a) Certificate issued by a competent authority, proving recording or registration in a professional activity compatible with the object of contracting;
   b) Tenderer’s statement verifying appropriate and available facilities and equipment for the execution of the object of contracting, with an indication of all the data necessary for its verification;
   c) Tenderer’s statement verifying the professional and technical team available for the execution of the object of contracting, along with resumés;
2. The Contracting Entity may restrict to national tenderers the participation in the procurement modalities defined in this Regulation if the contracting of public works, supply of goods or rendering of services has an estimated value not higher than three times the limit set under Numbers 2 and 3 of Article 90.

The Regulation adopts clear and practical criteria for the definition of national tenderer.

2. A Entidade Contratante pode restringir a participação a concorrentes nacionais, as modalidades de contratação definidas no presente Regulamento, sempre que se trate de contratação de empreitada de obras, de fornecimento de bens ou de prestação de serviços, cujo valor estimado não seja superior a três vezes o limite estabelecido nos termos dos nos. 2 e 3 do artigo 90.
3. If the Contracting Entity does not use the prerogative provided for in the previous number, it shall establish the following margins of preference to national tenderers:

a) Ten per cent of the contract value, without taxes, for public works; and

b) Fifteen per cent of the contract value, without taxes, for goods.

In procurement processes whose estimated value does not exceed three times the limit set for the Limited Tender modality (pursuant to Article 90), the Contracting Entity may either determine that only Mozambican tenderers may participate in the tender or establish the abovementioned margins of preference to Mozambican tenderers to the detriment of foreign tenderers.

The provisions above ensure that Mozambican suppliers, service providers or contractors will be granted an advantage in procurement, thus promoting the development of the Mozambican economy. However, instead of being granted solely for reasons of nationality, these advantages should be conditional upon compliance with technical, quality or socio-environmental standards; the verifiable generation of employment, income, tax revenues or other social benefits; or the promotion of technological innovation. Including these conditions would be important to ensure that benefits are granted exclusively to those Mozambican suppliers that effectively and verifiably promote sustainable development.

4. For purposes of applying the margin of preference for goods, it is necessary to submit the producer’s standard declaration as proof of incorporation of national production factors, the value of which must correspond to at least 20 per cent of the factory price of the finished product. The Minister who supervises the area of Finances may adjust the above percentage.

5. If it intends to exercise the prerogatives provided for in Number 2 above, the Contracting Entity must obtain prior and reasoned authorization from the Minister above him or her; the restriction of participation to national tenderers only must be expressly noted in the Tender Announcement and Documents.

ARTICLE 27
(Foreign Tenderers)

1. Foreign tenderers must comply with the general norms established in this Regulation, in specific legislation and in the Tender Documents, by submitting documents equivalent to those required from national tenderers.

2. Foreign tenderers, whether or not authorized to perform their activities in Mozambique, must furthermore:

a) Have an agent resident and domiciled in the Country, with special powers to be served with process, to receive notices and to respond administratively and judicially for the tenderer’s acts, submitting the power of attorney with the documents listed in this Regulation;

b) Prove their legal, economic, financial and technical qualification and their good fiscal standing in their country of origin;

c) Prove the inexistence of bankruptcy or judicial reorganization requests in Mozambique and in the country of origin; and

4. Para efeitos de aplicação da margem de preferência para bens, é indispensável a apresentação do modelo de declaração do produtor para prova de incorporação de factores nacionais correspondentes, cujo valor deve corresponder a pelo menos vinte por cento do preço a porta da fábrica do produto acabado, podendo o Ministro que superintende a área das Finanças ajustar a percentagem acima referida.

5. Caso pretenda exercer as prerrogativas previstas no no. 2, a Entidade Contratante deve obter autorização prévia e fundamentada do Ministro de tutela, fazendo-se constar, expressamente, a restrição da participação apenas de concorrentes nacionais no Anúncio e Documentos do Concurso.

ARTIGO 27
(Concorrente estrangeiro)

1. O concorrente estrangeiro deve atender às normas gerais fixadas no presente Regulamento, em legislação específica e nos Documentos de Concurso, mediante apresentação de documentos equivalentes aos exigidos a concorrentes nacionais.

2. O concorrente estrangeiro, quer esteja ou não autorizado a exercer a sua actividade em Moçambique, deve ainda:

a) Ter procurador residente e domiciliado no País, com poderes especiais para receber citação, intimação e responder administrativa e judicialmente pelos seus actos, juntando o instrumento de mandato com os documentos determinados no presente Regulamento;

b) Comprovar a sua qualificação jurídica, económico-financeira, técnica e regularidade fiscal no país de origem;

c) Comprovar a inexistência de pedidos de falência ou concordata em Moçambique e no país de origem; e
d) Submit documents written in the Portuguese language.

3. The Contracting Entity may, whenever it deems it necessary, confirm the veracity of the contents of the documents referred to in items b) and c) of the previous number.

ARTICLE 28
(Consortiums and Associations)
1. Tenderers constituted in consortiums or associations are always allowed to participate in public tenders.
2. The members of a consortium or association may not participate in the same public tender in an isolated manner or as members of another consortium or association.
3. Omissions regarding consortiums and associations shall be governed by specific legislation.

ARTICLE 29
(Constitution of Consortium or Association)
1. The document constituting a consortium must contain:
   a) The name and qualifications of each member forming the consortium and the indication of each of their participation shares;
   b) An indication of the member representing the consortium before the Contracting Entity, with powers to take on obligations and to be served with process and to receive notices on behalf of all the members forming the consortium; and
   c) Obligation of joint and severable liability of the members forming the consortium for all the obligations and acts of the consortium.
2. The constitution of an association is governed by specific legislation.

ARTICLE 30
(Special Qualifications of a Consortium)
1. If the tenderer is a consortium, each of its members must submit the documents for the legal, economic, financial and technical qualification and of good fiscal standing required pursuant to Articles 22 to 25 in this Regulation; they must also present the document constituting the consortium or its project, along with a letter of commitment to form the consortium in case it wins the public tender.
2. The requirements of minimum revenue and share capital or net worth of the consortium may result from the sum of the proven values of each of its members.
3. The technical qualification requirements of the consortium may be proved by one of its members or by the sum of the elements that form the technical capacity of each of them.

d) Proceder à entrega dos documentos escritos em língua portuguesa.

3. A Entidade Contratante poderá, sempre que a julgar necessária, confirmar da veracidade do conteúdo dos documentos referidos nas alíneas b) e c) do número anterior.

ARTIGO 28
(Consórcios e associações)
1. É sempre permitida a participação, nos concursos, de concorrentes constituídos em consórcio ou associações.
2. Os membros integrantes de um consórcio ou associação não podem participar, no mesmo concurso, isoladamente nem integrando outro consórcio ou associação.
3. As omissões relativas a consórcios e associações serão colmatadas por legislação específica.

ARTIGO 29
(Constituição de consórcio ou associação)
1. Do documento de constituição de consórcio deve constar:
   a) Nome e qualificação de cada membro integrante do consórcio e a indicação da participação de cada um deles;
   b) Indicação do membro representante do consórcio perante a Entidade Contratante, com poderes para assumir obrigações e para receber citação e intimação em nome de todos os membros integrantes do consórcio; e
   c) Assunção de responsabilidade solidária das membros integrantes do consórcio por todas as obrigações e actos do consórcio.
2. A constituição de associação rege-se por legislação específica.

ARTIGO 30
(Habilitação especial de consórcio)
1. No caso de consórcio concorrente, cada um dos seus membros deve apresentar os documentos de qualificação jurídica, económico-financeira e técnica e de regularidade fiscal exigidos nos termos dos artigos 22 a 25 do presente Regulamento, devendo também ser apresentado o documento de constituição do consórcio ou o respectivo projecto acompanhado de declaração de compromisso para constituição do consórcio caso vença o concurso.
2. Os requisitos de facturação mínima e de capital social ou de património líquido do consórcio podem resultar da soma dos valores comprovados de cada um dos membros integrantes.
3. Os requisitos de qualificação técnica do consórcio podem ser comprovados por um dos seus membros ou pela soma de elementos que integram a capacidade técnica de cada um deles.
4. The provisional or final guarantees of the consortium may be offered individually by any of its members or have their value shared between all its members, at the consortium’s exclusive discretion.

**SECTION VI**
**Public Tender, Publication and Notification**

**ARTICLE 31**
*(Elements of the Tender Announcement)*

1. The Tender Announcement must, among other elements, define precisely, sufficiently and clearly:
   a) The Contracting Entity promoting it;
   b) Object;
   c) Venue, dates and times of the day in which the Tender Documents may be read and obtained;
   d) Venue, dates and times of the day for receipt of proposals; and
   e) Venue, date and time of day in which the proposals will be opened.

2. In the public tender for the contracting of public works, if visiting the construction site is mandatory, the Announcement must indicate the dates and times of the visit.

**ARTICLE 32**
*(Publication of the Tender Announcement)*

1. The Tender Announcement shall be published in the written press, at least twice, and in the headquarters of the Contracting Entity; in case of International Tender, it must be published in the Republic Bulletin and/or on an Internet page, and may be further circulated by other means.

2. The following must be published:
   a) Tender Announcement, announcing that a tender will be held;
   b) Public invitation for entry in the registry; and
   c) Awarding of the object of the public tender to the winning tenderer.

**ARTICLE 33**
*(Right to Public Review)*

1. All the documents forming the administrative proceeding of contracting are open for public review, since the publication of the Tender Announcement until 60 days after its conclusion, independently of payment or taxes or fees, except for those cases whose disclosure may compromise the confidentiality of the evaluation process, or national defense and security.
2. The exception referred to in the previous number is not applicable to the internal and external control bodies, pursuant to applicable legislation.

3. The documents pertaining to evaluation and to the proposals of the tenderers are confidential, and are only made available to the entity responsible for providing clarification on the results of the evaluation process, without prejudice to the provision of Number 3 of Article 140 of this Regulation.

<table>
<thead>
<tr>
<th>ARTICLE 34</th>
<th>(Notification of Participants)</th>
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<tbody>
<tr>
<td>1. The acts carried out in the contracting that only interest the participants must be communicated to the tenderers by the Contracting Entity by means of direct notification.</td>
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<tr>
<td>3. The following must be notified:</td>
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<tr>
<td>a) Call for signing of the contract;</td>
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<td>b) Decision on the ranking of proposals and awarding of the tender;</td>
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<td>c) Decision on the participant’s qualification ;</td>
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<td>d) Decision on entry in the registry and on updates in registry data;</td>
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<td>e) Filing and decision of claims and appeals;</td>
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<td>f) Act communicating the intention of canceling or invalidating the proceeding;</td>
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<tr>
<td>g) Call of the participants to discuss initial proposals, in case of a Two-Stage Tender;</td>
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<td>h) Call for the confirmation of the declarations submitted by the winning tenderer; and</td>
<td></td>
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<tr>
<td>i) Other acts deemed necessary.</td>
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<tr>
<td>3. All the participants must be notified of the acts defined in the previous number, except for those participants whose right to participate has been precluded.</td>
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</table>

The aspects of publicity, opportunity for public review and notification of tenderers (even in view of the necessary exceptions) provided for in the articles above are welcome as important factors of fairness and openness in public procurement.
SECTION VII  
Criteria for Proposal Evaluation and Decision  

ARTICLE 35  
(Evaluation and Decision Criteria)  

1. The contracting of public works, supply of goods and rendering of services must be decided based on the lowest-price criterion.  

2. In exceptional cases, if it is not viable to decide based on the lowest-price criterion, the Contracting Entity may decide, in a conjugated criterion, based on the technical evaluation and on the price, giving reasons for the decision.  

Establishing the lowest-price criterion as the standard basis for deciding on the winning tenderer in Public Tenders might make it more difficult to account for sustainability criteria, since the most sustainable alternative may not be the least expensive considering immediate costs only.  

The first item of the article could be amended, so that the decision is made based on the lowest-cost criterion rather than based on the lowest-price criterion. This amendment would allow the argument that, although the most sustainable choice may not have the lowest (short-term) price, it has the lowest (short- and long-term) cost.  

Alternatively or complementarily, the exception provided for in the second item of the article could be made the standard rule, so that decisions are, as a rule, based on the “conjugated criterion” (price and technical evaluation), without the need for specific reason-giving by the Contracting Entity. Thus, sustainability aspects could be covered by the technical evaluation criteria.  

ARTICLE 36  
(Lowest-Price Criterion)  

1. The decision based on the lowest price must provide the choice of proposals that guarantee the level of quality and the qualification of the tenderer necessary to achieve the public interest, in accordance with the Tender Documents.  

In guaranteeing a minimum level of quality for proposals and of qualification of tenderers, this provision enforces the argument that sustainability criteria (regarding aspects of both proposals and the tenderers) must be taken into account even in decisions based on the lowest-price criterion and even in the absence of the amendments suggested to the previous article.  

2. In the price evaluation, the payment conditions may be taken into account, as long as this criterion is defined objectively and in advance in the Tender Documents.  

ARTICLE 37  
(Conjugated Criterion)  

1. The evaluation based on the conjugation of the technical and price proposals is done in accordance with the weighting criteria established in the Tender Documents.  

2. The Tender Documents shall also specify the essential factors, in addition to price, to be considered in the evaluation of the proposal, and the manner of their application for purposes of determining the proposal with the lowest evaluated price.  

In the evaluation of the price, the payment conditions may be taken into account, as long as this criterion is defined objectively and in advance in the Tender Documents.
The weighting criteria and the essential factors in the Tender Documents must be formulated so as to ensure that due weight is given to the sustainability considerations, as part of both the lowest-cost criterion and the technical evaluation criterion.

3. The technical evaluation factors may be defined by a mathematical formula that contemplates, in an objective manner, the variables referred to in the previous number.

4. In the evaluation, other factors may be considered, including:
   a) Cost of transportation and insurance to a specified location;
   b) Payment schedule;
   c) Delivery deadline;
   d) Operational costs;
   e) Equipment efficiency and adequacy;
   f) Availability of replacement parts and maintenance services;
   g) Warranty conditions;
   h) Training;
   i) Safety;
   j) Environmental benefits;
   k) Availability of equipment and qualification of the technical team, in cases in which this represents an advantage for the Contracting Entity; and
   l) Being the holder of a valid certificate of the right to use the label “Mozambican Pride – Made in Mozambique.”

This list of factors to be considered in the evaluation is the only mention of the environment in the entire Regulation (environmental benefits, under letter j). Other sustainability factors could be added to the list; for example, “cost of the products throughout their life cycle,” “social benefits,” “socio-environmental responsibility of suppliers, service providers and contractors.” However, sustainability factors may be considered even if amendments are not viable, because the list in the article is non-exhaustive.

2. When the conjugated criterion is adopted and there is a tie between two or more proposals, the final ranking shall be attributed to the tenderer that holds the best technical rank, and, if the tie persists, the final ranking shall be decided by a draw in a public session.

SECTION VIII
Decision Criteria for Concession Tenders

ARTICLE 39
(Decision Criteria)

1. Without prejudice to specific legislation, the decision of a public tender for the concession of public works or public services may adopt, in isolation or in a conjugated manner, the following criteria:

2. Quando for adoptado o critério conjugado e houver empate entre duas ou mais propostas, a classificação final é atribuída ao concorrente detentor da melhor classificação técnica, e persistindo o empate, a classificação, final deve ser decidida por sorteio, em sessão pública.

SECÇÃO VIII
Dos critérios de decisão de concurso para concessão

ARTIGO 39
(Critérios de Decisão)

1. Sem prejuízo da legislação específica a decisão de concurso para a concessão de obras ou prestação de serviços públicos pode ser adoptada, isolada ou conjuntamente, os seguintes critérios:
| a) Highest price offer for the concession; | a) Maior oferta de preço pela outorga; |
| b) Lowest tariff or price to be charged to users; | b) Menor tarifa ou preço a ser praticado junto aos utilizadores; |
| c) Best quality of services or goods made available to the public; | c) Melhor qualidade dos serviços ou dos bens postos à disposição do público; |
| d) Best satisfaction of the demand; and | d) Melhor atendimento e satisfação da procura; e |
| e) Being the holder of a valid certificate of the right to use the label “Mozambican Pride – Made in Mozambique.” | e) Ser titular de certificado válido do selo do direito de uso do “Orgulho Moçambicano. Made in Mozambique.” |

In addition to social and environmental sustainability criteria, other factors among those listed under Item 4 of Article 37 could be included in the article above as criteria for decisions on awarding of concessions.

2. The selection of the best price offer for the concession may consider payment conditions, in accordance with criteria previously and objectively established in the Tender Documents.

3. The best-quality criterion encompasses techniques used to ensure regularity, efficiency, safety, currency, generality and courtesy in rendering the service to users or in the enjoyment of the good and must be weighed in accordance with objective parameters detailed in the Tender Documents.

The generation of social and environmental benefits in rendering the service to users or in the enjoyment of the good should be included as part of the best-quality criterion.

4. The analysis of the best customer service and satisfaction of demand encompasses the quantity and quality of the goods and services made available for enjoyment, the time limits proposed for initiating the rendering of the service or enjoyment of the good, the schedule for supply, the area of coverage and the prediction of expansion, in accordance with criteria previously and objectively established in the Tender Documents.

5. The quality of services or goods and the satisfaction of demand may be assessed by means of the verification of their sufficiency and by their rank, as provided for in the Tender Documents.

6. Without prejudice to specific legislation, the norms under Section VII above apply to the decision criteria for the concession of public works or services, to the extent that they do not conflict with the provisions under this Section.

SECTION IX
Contracts
ARTICLE 40
(Nature and Regime)

1. The contracts governed by this Regulation are of an administrative nature.
2. The contracts for public works, the supply of goods, the rendering of services and leases concluded by State bodies and institutions are governed by the norms of this section, by their clauses and by the rules of public law; the principles of general contract theory and, supplementarily, private law provisions are applicable to such contracts.

ARTICLE 41
(Prior Declarative Act)
1. To conclude the contract, the Contracting Entity must, within five business days following the award, notify the winning tenderer to present, within no more than 10 business days from the date of receipt of the notice, up-to-date certificates of the qualification requirements submitted in the tender phase that have expired throughout the tender process.

2. Submission of certificates and affidavits referred to in this article may be waived if the Contracting Entity, in a public act of opening of proposals, assesses the tenderer’s good standing directly, including by electronic means.

ARTICLE 42
(Prior Acts of the Contracting Entity)
1. After the prior act defined in Article 41, the Contracting Entity must:
   a) Confirm and declare that the expenses fit the corresponding budgetary resources;
   b) Confirm and declare that they are compatible with the allocation approved in the preparatory phase, when the contractual obligations involve expenses in more than one fiscal year; and
   c) Request an authorization from the competent body to conclude the contract, when payment obligations result from commitments undertaken in international contracts or agreements.

This is another important provision from the standpoint of economic sustainability, in that it aims at ensuring fiscal responsibility in government procurement.

2. The copy of the authorization referred to in item c) of No. 1 must be included in the process files.

ARTICLE 43
(Calling of the Winning Tenderer)
1. After the procedures defined in the previous article have been fulfilled, the Contracting Entity must call the winning tenderer to sign the contract within the time limit indicated in the Tender Documents, which may be neither fewer than 10 business days nor more than 30 business days.

2. The copy of the authorization referred to in article 41, No. 1 must be included in the process files.

ARTIGO 41
(Acto declarativo prévio)
1. Para celebração do contrato, a Entidade Contratante deve, no prazo de cinco dias úteis após a adjudicação, notificar o concorrente vencedor para apresentar, no prazo não superior a dez dias úteis a contar da data da recepção da notificação, certidões actualizadas dos requisitos de qualificação apresentados na fase de concurso que, entretanto, tenham caducado no decurso do mesmo.

2. Pode ser dispensada a apresentação das certidões e atestados referidos neste artigo, se a Entidade Contratante, em acto público de abertura das propostas, aferir directamente, inclusive por meio electrónico, a regularidade da situação do concorrente.

ARTIGO 42
(Actos prévios da Entidade Contratante)
1. Terminado o acto prévio definido no artigo 41, a Entidade Contratante deve:
   a) Confirmar e declarar o cabimento das despesas na correspondente verba orçamental;
   b) Confirmar e declarar que elas são compatíveis com o escalonamento aprovado na fase preparatória, quando os compromissos do contrato envolverem despesas em mais de um ano económico; e
   c) Solicitar autorização ao órgão competente, para celebração do contrato, quando as obrigações de pagamento decorrem de compromissos assumidos em contratos ou acordos internacionais.

This is another important provision from the standpoint of economic sustainability, in that it aims at ensuring fiscal responsibility in government procurement.

2. A cópia da autorização referida na alínea c) do no. 1 deve ser junta ao processo.

ARTIGO 43
(Convocação do concorrente vencedor)
1. Cumprindo os procedimentos definidos no artigo anterior a Entidade Contratante deve convocar o concorrente vencedor para celebrar o contrato no prazo fixado nos Documentos de Concurso, que não pode ser inferior a dez dias úteis, nem superior a trinta dias úteis.
2. If the winning tenderer does not appear to sign the contract in the established time limit, without prejudice to the loss by the winning tenderer of the provisional guarantee and of the imposition of other sanctions provided for in this Regulation and in the Tender Documents, the Contracting Entity must cancel the award and examine the documentation of the second-best tenderer.

**ARTICLE 44**
(Form and Formalities)

1. Those contracts provided for in this Regulation whose value is higher than the limit established under No. 3 of Article 113 must be put in writing, in accordance with the templates contained in the Tender Documents that are an integral part of this Regulation.

2. Once the contract is concluded, the Contracting Entity must, pursuant to specific legislation, submit it to the Administrative Tribunal for purposes of review.

**ARTICLE 45**
(Essential Clauses)

1. The contracts must mention, specifically:
   a) Identification of the contracting parties;
   b) The object of the contract, appropriately individualized;
   c) Time limits for the execution of the public works, supply of goods or rendering of services, indicating start and end dates;
   d) Guarantees relating to contract performance, when required;
   e) Form, time limits and other clauses of the payment regime;
   f) Total estimated costs resulting from the contract;
   g) Applicable sanctions in case of noncompliance;
   h) The judicial or other means for the settlement of any disputes resulting from the contract, whether in its interpretation or in its performance;
   i) The mandatory inclusion of an anticorruption clause; and
   j) Other conditions that the parties also consider essential to the good performance of the contract.

Clauses related to sustainability could be made mandatory in all contracts, including, for example, a clause on socio-environmental responsibility of suppliers, service providers and contractors.

2. The contract may provide for the adoption of independent arbitration for the settlement of disputes resulting from the interpretation and performance of the contract, to be conducted in Mozambique and in the Portuguese language, pursuant to the specific legislation on the matter.

2. Caso o concorrente vencedor não compareça para assinar o contrato no prazo estabelecido, sem prejuízo da perda pelo concorrente vencedor da garantia provisória e de imposição de outras sanções previstas no presente Regulamento e nos Documentos de Concurso, a Entidade Contratante deve cancelar a adjudicação e examinar a documentação do melhor concorrente seguinte.

**ARTIGO 44**
(Forma e formalidades)

1. Os contratos previstos no presente Regulamento, cujo valor seja superior ao limite previsto no no. 3 do artigo 113 devem ser reduzidos a escrito, obedecendo aos modelos constantes dos Documentos de Concurso que são parte integrante do presente Regulamento.

2. Celebrado o contrato, a Entidade Contratante deve, nos termos previstos em legislação específica, submetê-lo ao Tribunal Administrativo para efeitos de fiscalização.

**ARTIGO 45**
(Cláusulas essenciais)

1. Os contratos devem mencionar, designadamente:
   a) Identificação das partes contratantes;
   b) Objecto do contrato, devidamente individualizado;
   c) Prazo de execução da obra, fornecimento de bens ou prestação de serviços, com indicação dos dados dos respectivos início e termo;
   d) Garantias relativas à execução do contrato, quando exigidas;
   e) Forma, prazos e demais cláusulas sobre o regime de pagamento;
   f) Encargo total estimado resultante do contrato;
   g) Sanções aplicáveis em caso de falta de cumprimento;
   h) O foro judicial ou outro, para a solução de qualquer litígio emergente do contrato, seja na sua interpretação, ou na sua execução;
   i) A inclusão obrigatória de uma cláusula anti-corrupção; e
   j) Outras condições que as partes considerem também essenciais à boa execução do contrato.

2. O contrato pode prever a adoção de arbitragem independente para solução de conflitos resultantes da interpretação e execução do contrato, a ser realizada em Moçambique e em língua portuguesa, com observância da legislação específica sobre a matéria.
3. The Tender Documents, the Contracted Party’s proposal, the projects and other patent tender elements form an integral part of the contract.

4. Contracts for the supply of goods and the rendering of current consumption services are limited to a maximum term of one year, and may be extended only once, for the same term, as long as the initial contractual conditions are maintained.

5. No payment provided for in the financial schedule may be made without the corresponding counterpart in the execution of public works, supply of goods or rendering of services.

ARTICLE 46
(Guarantees)

1. The Contracting Entity must require that the Contracted Party give an adequate final guarantee for the satisfactory and punctual performance of its obligations.

2. The submission of a guarantee of the satisfactory and punctual performance of the Contracted Party’s obligation is a prior condition to the conclusion of the contract.

3. The final guarantee may be waived in the cases of contracting of small-scale public works, supply of goods and rendering of services and in the selection of natural persons for the rendering of consulting services.

4. Advance payments are not allowed without the submission of a guarantee in the same amount.

SECTION X
Public Prerogatives

ARTICLE 47
(Prerogatives)

The Contracting Entity has the prerogative of, pursuant to the provisions of this Regulation:

a) Unilaterally terminating the contract;

b) Monitoring contract performance, directly or by a contracted supervisor;

c) Suspending contract performance;

d) Applying sanctions for total or partial noncompliance with the contract;

e) Cancelling the public tender; and

f) Invalidating the public tender.
The Contracting Entity’s prerogatives provided for under the article above are important in enforcing, during contract performance, the sustainability criteria included throughout the procurement process. For that purpose, the Contracting Entity is entitled to suspend or to terminate the contract unilaterally if the Contracted Party breaches its sustainability-related obligations, to monitor the Contracted Party’s compliance with such obligations and to apply sanctions for partial or total noncompliance.

SECTION XI
Contract Performance

ARTICLE 48
(Monitoring)

1. The execution of all public works must be monitored by independent supervisors, designated by the Contracting Entity and contracted for such purpose based on the procedures specified in Chapter III of this Regulation.

2. In the cases of contracting of small-scale public works, the Contracting Entity may choose to carry out direct monitoring.

3. In situations where two or more supervisors are designated, one of them must be designated as the lead supervisor.

4. It falls to the supervisors to oversee and verify the exact performance of the project and any changes, of the contract, of the Tender Documents and of the work plan.

The independent supervisors appointed to monitor contract performance can act as the Contracting Entity’s agents empowered with the enforcement of the sustainability aspects of procurement in contract performance, in line with the comment on Article 47, above. It is important for the supervisors to be trained in sustainable public procurement generally and to be aware of the sustainability aspects involved in the specific contracting processes they supervise.

It would be beneficial to add to this clause that the supervisors are to be preferably chosen from among the members of the Jury, or procurers that were involved in the specific procurement proceeding since its preparatory phase, or from persons with general experience in sustainable public procurement and contracting. Knowledge of sustainable public procurement generally and of the earlier phases of the specific procurement process can help supervisors to monitor contract performance more effectively.

ARTICLE 49
(Provisional Acceptance of Public Works)

1. Once the public works are concluded, the supervisors must notify the Contracting Entity to carry out the inspection for purposes of provisional acceptance of the public works.

2. This inspection shall be witnessed by the supervisor, the Contracted Party and the Contracting Party, and an inspection report shall be drafted, confirmed by the supervisors and signed by the three parties.

3. The report referred to in the previous number shall contain a recording of all anomalies detected, the time limits and the responsibility for correcting them.
ARTICLE 50
(Final Acceptance of Public Works)

1. After the maximum guarantee period of five years from the conclusion of the public works, or a period of at least one year established in the contract, in accordance with its nature, by initiative of the Contracting Entity or at the request of the contractor, a new inspection of the public works shall be conducted.

2. If it is verified in the inspection that the public works do not present deficiencies, deteriorations, evidence of collapsing or of lack of soundness for which the contractor shall be responsible, final acceptance shall be promoted, by means of a new report, signed by the Contracting Entity, by the supervisors and the contractor.

ARTICLE 51
(Deficiencies in Execution)

1. If, as a consequence of the inspection, it is verified that the construction is not in proper condition to be accepted, the contractor shall be notified by the Contracting Entity to correct the deficiencies presented as soon as possible.

2. If the contractor does not act in accordance with the provision of the previous number, the Contracting Entity must promote, at the expense of the contractor, public works necessary to remove the deficiencies. For that purpose, the Contracting Entity may resort to the final guarantee.

3. The Contracting Entity may only proceed to the final acceptance of the public works after the situations referred to in the previous numbers have been resolved.

ARTICLE 52
(Acceptance of Goods or Services)

1. The Contracting Entity shall designate at least three individuals (selected from outside the Jury) to be responsible for accepting the goods or services.

2. The individuals referred to in the previous number must verify the conformity of the goods supplied or the services rendered with the contract, in the place of delivery or execution.

While it may be understandable that the persons responsible for receiving and accepting the goods or services should not be the individuals forming the Jury, knowledge on procurement generally or on the earlier phases of the specific procurement process would be useful; otherwise, the persons receiving and accepting the goods or services may not be familiar with the procurement need(s) to be satisfied, or the quality aspects that the goods or services must meet, among other factors.
ARTICLE 53
(Deficiencies in Providing or Rendering)

1. If by virtue of verified deficiencies the goods or services are not in condition to be accepted, the individuals designated for their acceptance must immediately communicate to the Contracting Entity that they were rejected and must be replaced by the contracted party.

2. The time limit for the replacement of rejected goods or services shall not exceed 30 days from the notice of the rejection decision.

SECTION XII
Amendment and Termination of Contracts

ARTICLE 54
(Modification)

1. Contracts governed by this Regulation may only be modified or changed with given reasons and by amendment when there is a need to change:

a) The project or the specifications for better suitability to the object of contracting;

b) The contract value as a result of the limits of quantitative increase or decrease resulting from changes to the object of contracting;

c) The execution regime of the public works or the services or the mode of supply of goods, because of the impossibility of execution of the original contracting terms; and

d) Payment conditions, by virtue of supervening circumstances, keeping the initial value.

Under item 1.a of Article 54 above, if improving the sustainability aspects of the projects or the specifications could make them more suitable, the public contract can be amended.

2. The Contracted Party shall accept, under the same contract terms, any additions or deletions to the public works, goods or services up to and including 25 per cent of the initial value of the contract.

3. Additions or deletions higher than the limit established in the previous number require the authorization of the Minister who supervises the area of Finances.

ARTICLE 55
(Cessation)

1. The contracts cease:

a) By the full performance of the obligations of the Contracting Entity and the Contracted Party;

b) By mutual agreement between the Contracting Entity and the Contracted Party; and

2. A Contratada fica obrigada a aceitar, nas mesmas condições contratuais, os acréscimos ou supressões que se fizerem nas obras, bens ou serviços, até vinte e cinco por cento do valor inicial do contrato.

3. Os acréscimos ou supressões superiores ao limite estabelecido no número anterior dependem da autorização por despacho do Ministro que superintende a área das Finanças.

ARTIGO 53
(Deficiências no fornecimento ou prestação)

1. Se por virtude de deficiências constatadas os bens ou serviços não estiverem em condições de ser aceites, os elementos designados para a sua recepção devem comunicar de imediato à Entidade Contratante a respectiva rejeição e a obrigatoriedade da consequente substituição pela contratada.

2. O prazo para a substituição dos bens ou serviços rejeitados não pode exceder trinta dias a contar da notificação da decisão de rejeição.

SECÇÃO XII
Da modificação e cessação dos contratos

ARTIGO 54
(Modificação)

1. Os contratos regidos pelo presente Regulamento apenas podem ser modificados ou alterados, mediante fundamentação e por apostila quando haja necessidade de alteração de:

a) Projecto ou especificações para melhor adequação ao objecto da contratação;

b) Valor contratual em decorrência dos limites de acréscimo ou diminuição quantitativa decorrente da adequação ao objecto da contratação;

c) Regime de execução da obra ou prestação de serviço ou do modo de fornecimento de bens, em face da inexequibilidade dos termos originários da contratação; e

d) Condições de pagamento, em virtude de circunstâncias supervenientes, mantendo-se o valor inicial.

2. A Contratada fica obrigada a aceitar, nas mesmas condições contratuais, os acréscimos ou supressões que se fizerem nas obras, bens ou serviços, até vinte e cinco por cento do valor inicial do contrato.

3. Os acréscimos ou supressões superiores ao limite estabelecido no número anterior dependem da autorização por despacho do Ministro que superintende a área das Finanças.

ARTIGO 55
(Cessação)

1. Os contratos cessam:

a) Pelo integral cumprimento das obrigações da Entidade Contratante e da Contratada;

b) Por mútuo acordo entre a Entidade Contratante e a Contratada; e
Unilateral termination of the contract by the Contracting Entity may be justified in several sustainability-related cases; for example, when the Contracted Party breaches sustainability-related clauses, specifications or projects (item 1.a), when it systematically fails to comply with the orders of the contract supervisors regarding sustainability requirements (item 1.d), or when it accumulates fines of 20 per cent of the contract value (or a lower limit established in the Tender Documents) for noncompliance with environmental laws and regulations (item 1.i).
2. The Contracted Party may unilaterally terminate the contract based on:

a) The impossibility of access to the area, site or object for the execution of the public works or for the supply of goods or the rendering of services on the contractual time limits, or of access to the sources of original materials specified in the Tender Documents or in the proposal, for an act attributable to the Contracting Entity;

b) A delay of more than 60 days in payments, whether total or partial, owed by the Contracting Entity by virtue of the public works, supply of goods or rendering of services; and

c) A lapse of 60 days from receipt of a written order of the Contracting Entity ordering the suspension of the execution of the public works or the rendering of services for reasons not attributable to the Contracted Party, except in case of force majeure or fortuitous event.

3. The party that intends to unilaterally terminate the contract must notify the other party of its intention of termination, indicating precisely the causes and their respective grounds.

4. Within no more than 30 days, the notified party shall cease the performing the actions indicated in the notification, at the end of which the notifying party may unilaterally terminate the contract based on the grounds contained in the notice.

ARTICLE 57
(Consequences of Unilateral Termination)

1. If the unilateral termination proceeds from the Contracting Entity, it has the right, without prejudice to what may be stipulated in the Tender Documents and in the contract, to:

a) Forfeit the final guarantee given by the Contracted Party, for the payment of contractual penalties and for the indemnification of damages caused to the Contracting Entity;

b) Retain the credits resulting from the contract, for the indemnification of the damages caused to the Contracting Entity, up to the limit of such damages;

c) Require from the Contracted Party an indemnification for the damages caused; and

d) Take immediate possession of the object of the contract, in the state and place where it may be, occupying and using the site, facilities, equipment, materials and personnel employed by the Contracted Party in the performance of the contract, if necessary for the continuity of execution.

2. A Contratada pode rescindir unilateralmente o contrato com fundamento:

a) Na impossibilidade de acesso à área, local ou objecto para execução das obras ou para fornecimento de bens ou prestação de serviços nos prazos contratuais, ou de acesso às fontes de materiais originais especificados nos Documentos de Concurso ou na proposta, por acto imputável à Entidade Contratante;

b) No atraso por prazo superior a sessenta dias, nos pagamentos, totais ou parciais, devidos pela Entidade Contratante em razão da execução das obras, fornecimento de bens ou prestação de serviços; e

c) No decurso de sessenta dias a contar da recepção da ordem escrita da Entidade Contratante ordenando a suspensão da execução da obra ou prestação de serviços, por motivos não imputáveis à Contratada, salvo em caso de força maior ou caso fortuito.

3. A parte que pretenda rescindir unilateralmente o contrato deve notificar a outra da sua intenção de rescisão indicando, com precisão, as causas e os respectivos fundamentos.

4. Num prazo não superior a trinta dias a parte notificada deverá afastar as causas imputadas findo o qual poderá a parte notificante rescindir unilateralmente o contrato com base nos fundamentos constantes da notificação.

ARTIGO 57
(Consequências da rescisão unilateral)

1. Se a rescisão unilateral proceder da Entidade Contratante, tem esta o direito, sem prejuízo do que estiver estipulado nos Documentos de Concurso e no contrato, de:

a) Declarar perdida a seu favor a garantia definitiva prestada pela Contratada, em pagamento de multas contratuais e para ressarcimento dos prejuízos causados à Entidade Contratante;

b) Fazer retenção dos créditos decorrentes do contrato, para ressarcimento dos prejuízos causados à Entidade Contratante, até ao limite dos mesmos;

c) Exigir da Contratada indemnização pelos prejuízos causados; e

d) Tomar posse imediata do objecto do contrato, no estado e local em que se encontrar, ocupando e utilizando a local, instalações, equipamentos, material e pessoal empregues pela Contratada na execução do contrato, se necessários à continuidade da execução.
2. If the unilateral termination proceeds from the Contracted Party, it has the right, without prejudice to what may be stipulated in the Tender Documents and in the contract, to:

a) Be immediately refunded for the final guarantee given;

b) Receive the payments due for the performance of the contract until the date of termination; and

c) Be refunded for the costs of demobilization of the shipyard (worksites).

SECTION XIII
Registry
ARTICLE 58
(Formation of the Registry)

1. The following fall within the responsibilities of the Functional Unit of Procurement Supervision:

a) Maintaining one single, up-to-date, registry of contractors of public works, suppliers of goods and service providers, eligible to participate in public tenders carried out by the State bodies and institutions, including State agencies and enterprises; and

b) Creating one single registry of contractors of public works, suppliers of goods and service providers forbidden from participating in the public tenders referred to in the previous item.

2. In view of the maintenance and enlargement of the registry referred to in the previous number, the following shall be performed:

a) Formulating, at least once every six months, a public invitation for entry in the registry, by an announcement published in the press; and

b) Automatically registering all persons that contract with State bodies and institutions.

3. Maintenance and updating of the registry of contractors of public works, suppliers of goods and service providers referred to in No. 1 of this article is the responsibility of the Managing Units of Procurement Execution.

ARTICLE 59
(Entry, Maintenance and Updating of the Registry)

1. Entry in the Registry depends on the submission by the interested party of its documents of legal, economic, financial and technical qualification and of its good fiscal standing provided for in this Regulation, with the exception of contractors of public works.

2. Entry of contractors of public works in the registry depends on the submission by the interested party of the Operation Licence or Authorization issued by the Licensing Commission of Civil Construction Contractors.
3. Maintenance of a registry entry depends on the upkeeping, by the interested party, of the documents referred to in previous number; contractors of public works, suppliers of goods and service providers who no longer meet the requirements for entry in the registry shall be excluded from the registry.

The registry provided for in Section XIII can serve as a tool for sustainable public procurement if registration and maintenance in the registry of suppliers of goods, service providers and contractors of construction works are also conditioned upon compliance with specified sustainability criteria.

4. The registry must be permanently open for entry to any interested party who meets the requirements set forth in this Regulation; registry data may be updated by the interested party at any time and pursuant to the law.

5. The request for entry in the registry by the interested party’s initiative must be decided by the Functional Unit of Procurement Supervision within 15 days of submission.

6. In any contracting modality, the qualification requirements may be proved by the registry elements; submitting the documents referred to in No. 1 of this article is unnecessary.

7. A decision denying a request for entry in the Registry must be justified by the Functional Unit of Procurement Supervision, and may be appealed.

ARTICLE 60
(Access to the Registry)

The registry must be permanently open to review by any person, with no need to demonstrate an interest or to pay any tax or fee.

CHAPTER II
Contracting Modalities

SECTION I
Public Tender

ARTICLE 61
(Definition)

Public Tender is the contracting modality in which any interested tenderer may participate, as long as it meets the requirements established in the Tender Documents.

ARTICLE 62
(Phases)

The Public Tender has the following phases, in the order indicated:

a) Preparation and launch;

b) Submission and opening of proposals and qualification document[s];
c) Evaluation and correction;  
d) Ranking and jury recommendation;  
e) Award; and  
f) Complaint and appeal.

ARTICLE 63  
(Tender Announcement)

To carry out a Public Tender, the Contracting Entity must publish a Tender Announcement, pursuant to Articles 31 and 32 of this Regulation, and communicate it to the Functional Unit of Procurement Supervision.

ARTICLE 64  
(Acquisition of Tender Documents)

Acquisition of Tender Documents is not a condition to participate in the Public Tender. The Contracting Entity may only charge the value equivalent to the reproduction cost to supply them.

ARTICLE 65  
(Contents of Tender Documents)

1. The Tender Documents must contain:  
   a) Identification of the Public Tender;  
   b) Object of contracting and its specification;  
   c) The phases of the Public Tender;  
   d) Address and deadline for requesting clarifications necessary to the appropriate understanding and interpretation of all rules and elements comprising the Tender Documents;  
   e) Sample delivery requirements, if applicable;  
   f) Tenderer qualification requirements;  
   g) Format of submitting proposals, indicating the elements and documents that must be attached to them;  
   h) The currency in which the price and payment conditions will be met;  
   i) Place, date and time of the day for delivery of proposals and qualification documents and for the opening of proposals;  
   j) Period of validity of the proposal, during which the tenderer is bound by it;  
   k) Possibility of submitting proposals with variants, when applicable;  
   l) Required guarantees;  
   c) De avaliação e saneamento;  
   d) De classificação e recomendação do júri;  
   e) De adjudicação; e  
   f) De reclamação e recurso.

ARTIGO 63  
(Anúncio de Concurso)

A realização do Concurso Público obriga a Entidade Contratante à publicação de Anúncio do Concurso, nos termos previstos nos artigos 31 e 32 do presente Regulamento, e a sua comunicação à Unidade Funcional de Supervisão das Aquisições.

ARTIGO 64  
(Aquisição dos Documentos de Concurso)

A aquisição dos Documentos de Concurso não é condição para participar no Concurso Público, podendo a Entidade Contratante cobrar, para seu fornecimento, apenas o valor correspondente ao custo de reprodução gráfica.

ARTIGO 65  
(Conteúdo dos Documentos de Concurso)

1. Dos Documentos de Concurso devem constar:  
   a) Identificação do Concurso Público;  
   b) Objecto da contratação e sua especificação;  
   c) As fases do Concurso Público;  
   d) Endereço e data limite para solicitação dos esclarecimentos necessários à boa compreensão e interpretação de todas as normas e elementos que integram os Documentos de Concurso;  
   e) Exigências de entrega de amostras, se for o caso;  
   f) Exigências de qualificação do concorrente;  
   g) Modo de apresentação das propostas, com indicação dos elementos e documentos que devem acompanhá-las;  
   h) A moeda em que deve ser expresso o preço e as condições de pagamento;  
   i) Local, dia e horário para entrega das propostas e documentos de qualificação e para abertura das propostas;  
   j) Prazo de validade das propostas, durante o qual o concorrente fica obrigado a manter a proposta;  
   k) Possibilidade de apresentação de propostas com variantes, quando for o caso;  
   l) As garantias que sejam exigidas;
r) Applicable penalties;  
RRr) Sanções aplicáveis;  
o) Draft contract;  
o) Minuta do instrumento de contrato;  
p) Technical specifications meeting primarily Mozambican standards;  
p) Especificações técnicas que observem prioritariamente as normas moçambicanas;  
q) Forms; and  
q) Formulários; e  
r) Other elements that the Contracting Entity may consider necessary or important.

The Tender Documents include the key requirements of each procurement proceeding and, therefore, are highly relevant for sustainable public procurement. In particular, the identification of the object of contracting and its specifications (item 1.a) should clearly state the sustainability aspects that the object should cover. The tenderer qualification requirements (item 1.f) should indicate the socio-environmental requirements (for example, environmental quality certificates) each tenderer must meet. In indicating the criteria for proposal evaluation and decision (item 1.m), the tender documents should cover any sustainability criteria adopted. If there are penalties for noncompliance with sustainability standards (item 1.n), they should be set out in the Tender Documents. Finally, the draft contract (item 1.o) should include all relevant socio-environmental responsibility clauses, so that all tenderers know, early on in the procurement process, the sustainability standards they will be required to meet.

2. The template Tender Documents that form part of this Regulation are mandatory.

The mandatory template Tender Documents could be the object of a further detailed analysis of the opportunities for sustainability in the Mozambican procurement legal regime.

ARTICLE 66  
(Availability of Tender Documents)  
From the publication of the Tender Announcement to the opening of proposals, the Tender Documents must be available for interested parties to review free of charge with no requirement to demonstrate an interest in contracting.

ARTICLE 67  
(Clarifications on Tender Documents)  
1. Any clarifications needed for proper understanding and interpretation of the published elements shall be requested by the tenderers in the first third of the period established for presenting proposals, and given in writing by the Entity for the purposes indicated in the Tender Documents until the end of the second third of the period established for presenting proposals.

2. The provision of clarifications does not affect the time limit determined in the Tender Documents for submitting qualification documents and proposals.

3. On the initiative of the interested parties or the Contracting Entity itself, the latter, by means of clarifications, may only set aside any doubts regarding the Tender Documents.

ARTIGO 66  
(Disponibilidade dos Documentos de Concurso)  
Desde a publicação do Anúncio do Concurso até à abertura das propostas, os Documentos de Concurso devem ficar à disposição no local, para consulta dos interessados, independentemente da demonstração de interesse em contratar e sem pagamento de qualquer taxa.

ARTIGO 67  
(Esclarecimentos sobre os Documentos de Concurso)  
1. Os esclarecimentos necessários à boa compreensão e interpretação dos elementos patenteados serão solicitados pelos concorrentes no primeiro terço do prazo fixado para a apresentação das propostas e prestados por escrito pela Entidade para o efeito indicado nos Documentos de Concurso até ao termo do terço imediato do mesmo prazo.

2. A prestação de esclarecimentos não afecta o prazo estipulado nos Documentos de Concurso para apresentação de documentos de qualificação e elaboração de proposta.

3. Por iniciativa dos interessados, ou da própria Entidade Contratante pode esta, por meio de esclarecimentos, apenas afastar possíveis dúvidas sobre os Documentos de Concurso.
4. The Contracting Entity may neither change the provisions in the Tender Documents nor include new rules, except as provided in the following article (68).

5. The Contracting Entity must communicate the clarifications it may have provided, pursuant to the previous numbers, to all interested parties that have acquired the Tender Documents and to those who later acquire them.

ARTICLE 68
(Modification of Tender Documents)

After the publication of the Tender Announcement, the modification of the Tender Documents must be published in the same way as the original text, with an extension of the time limit, if necessary.

ARTICLE 69
(Time Limits to Submit Qualification Documents and Proposals)

1. The Tender Documents must set forth a reasonable and sufficient period of at least 21 days for the interested parties to prepare their qualification documents and proposals, in accordance with the nature and characteristics of the public works, goods, or services to be contracted.

2. The period for the submission of qualification documents and proposals begins on either the date of publication of the Tender Announcement or the date when the Tender Documents are made available, whichever is later.

ARTICLE 70
(Form of Submitting Qualification Documents and Proposals)

The qualification documents and the proposal must be submitted in a single opaque, sealed envelope, with the complete identification of the tenderer on the outside, as well as the object of the tender.

ARTICLE 71
(Period of Validity of Proposals)

1. The period of validity of proposals must be defined in the Tender Documents and must be at least 21 days long (and not longer than 120 days) from the final date of their submission.

2. The tenderer shall be bound by the proposal during its period of validity.

ARTICLE 72
(Guarantees, Types and Forms)

1. The Tender Documents must establish, as a condition for acceptance of the proposal, the provision of guarantees pursuant to the following numbers.
2. The guarantees may be:

a) Provisional, those provided upon submission of the proposal, to ensure its maintenance in Public Tenders whose estimated value is higher than the limits provided for in No. 2 of Article 90 of this Regulation; and

b) Final, those provided after the award and before the signing of the contract, to ensure compliance with the obligations resulting therefrom.

3. The value of the provisional guarantee may not exceed 1.5 per cent of the contracting value estimated by the Contracting Entity.

4. The value of the final guarantee may not exceed 10 per cent of the Contracted Party’s proposal.

5. The following forms of guarantee shall be accepted by the Contracting Entity:

a) Bank guarantee;
b) Cash guarantee;
c) Certified check;
d) Government bonds; and
e) Surety bond.

6. In addition to those defined in this article, the Contracting Entity may accept other forms of guarantee, as long as they are provided for in the Tender Documents.

7. The tenderer may combine the guarantees provided for in No. 5, as long as they add up to the previously required value.

ARTICLE 73
(Loss and Refund of Guarantees)

1. In Public Tenders whose estimated value is higher than the limits provided for in No. 2 of Article 90 of this Regulation, the winning tenderer shall lose the provisional guarantee to the Contracting Entity if:

a) Refuses to sign the contract;
b) Provides the final guarantee after the established time limit; or
c) Does not accept the corrections pursuant to No. 2 of Article 78 of this Regulation.

2. Provisional guarantees provided in Public Tenders whose estimated value is higher than the limits provided for in No. 2 of Article 90 of this Regulation shall be refunded to the winning tenderer:

ARTIGO 73
(Perda e devolução das garantias)

1. Nos Concursos cujo valor estimado seja superior aos limites previstos no no. 2 do artigo 90 do presente Regulamento, o concorrente vencedor perderá a garantia provisória a favor da Entidade Contratante se:

a) Recusar assinar o contrato;
b) Entregar a garantia definitiva fora do prazo fixado; ou
c) Não aceitar as correções nos termos do no. 2 do artigo 78 do presente Regulamento.

2. A garantia provisória prestada nos Concursos cujo valor estimado seja superior aos limites previstos no no. 2 do artigo 90 do presente Regulamento, deve ser restituída ao concorrente vencedor:
a) Upon contract formation;
b) When the Public Tender is extinguished; or
c) When the period of validity of its proposal expires and is not
extended.
3. The provisional guarantees of the other tenderers shall be refunded
after the signing of the contract.
4. The Tender Documents may determine that the provisional
guarantee may be converted in a final guarantee, without prejudice to
its reinforcement, when necessary.

ARTICLE 74
(Currency)
1. Price proposals shall be presented in the national currency, the
Metical, except as provided for in the Tender Documents.
2. Price proposals in a currency other than the national currency must
be duly justified by the Managing Unit of Procurement Execution and
approved by the Competent Authority.
3. In preparing their proposals, tenderers must include all taxes, fees
and other dues on the contracting of public works, the supply of goods
or the rendering of services.

ARTICLE 75
(Public Act of Opening of Proposals)
1. The opening of proposals is done by the Jury in a public act in which
all persons who so wish may participate.
2. The public act of opening of proposals begins with the identification
of the Public Tender and the reading of the list of tenderers, prepared in
accordance with the order of receipt of envelopes.
3. After the formalities provided for in the previous numbers, the
envelopes containing the qualification documents and proposals are
opened and initialed by the members of the Jury.
4. If the evaluation criterion combines technical factors and price,
the Tender Documents may exceptionally provide that the envelopes
with price proposals be opened only after the evaluation of technical
proposals.
5. Upon the opening of proposals, the Jury must announce the names
of the tenderers, the price quotes and, when so required in the Tender
Documents, (a) the existence (or not) of a provisional guarantee; (b)
the presence of a proposal with a variant; and (c) a declaration of
discounts offered.

a) Com a celebração do contrato;
b) Quando o concurso for extinto; ou
c) Quando o prazo de validade da sua proposta expirar e não for prorrogado.
3. As garantias provisórias dos restantes concorrentes são devolvidas após a
assinatura do contrato.
4. Os Documentos de Concurso podem fixar que a garantia provisória pode
ser convertida em garantia definitiva, sem prejuízo do seu reforço, quando
for necessário.

ARTIGO 74
(Moeda)
1. A proposta de preços deve ser apresentada em moeda nacional, o Metical,
salvo nos casos excepcionais previstos nos Documentos de Concurso.
2. A proposta de preços em moeda diferente da moeda nacional deve ser
devidamente fundamentada pela Unidade Gestora Executora das Aquisições
e aprovada pela Autoridade Competente.
3. Na elaboração das suas propostas os concorrentes devem incluir todos os
impostos, taxas e outros encargos incidentes sobre a empreitada de obras
públicas, fornecimento de bens ou prestação de serviços.

ARTIGO 75
(Acto público de abertura de propostas)
1. A abertura das propostas é feita pelo Júri em acto público e nele podem
participar as pessoas que o desejarem.
2. O acto público de abertura das propostas inicia-se com a identificação do
concurso e leitura da lista de concorrentes, elaborada de acordo com o ordem
de receção dos invólucros.
3. Cumpridas as formalidades previstas nos números antecedentes, são
abertos os invólucros contendo os documentos de qualificação e as propostas,
as quais devem ser rubricados pelos membros do Júri.
4. Caso o critério de avaliação seja o de conjugação de técnica e de preço,
os Documentos de Concurso poderão, excepcionalmente, estabelecer que
os invólucros com as propostas de preços apenas sejam abertos após a
avaliação das propostas técnicas.
5. No acto da abertura das propostas, o Júri deve anunciar o nome dos
concorrentes, os preços cotados e, quando exigido nos Documentos de
Concurso, (a) a existência ou não de garantia provisória; (b) a presença de
proposta com variante; e (c) declaração de descontos oferecidos.
6. The proposal-opening session ends with the reading of its minutes, which must be signed by the members of the Jury and the tenderers’ representatives present in the session.

7. The Jury proceeds immediately, in a closed session, to the analysis of the qualification documents and proposals presented by the tenderers, in accordance with the criteria established in the Tender Documents.

ARTICLE 76
(Procedures to Correct Flaws or Omissions)

1. If the Jury finds flaws or omissions in the qualification documentation, it shall request, on behalf of the Contracting Entity, that the tenderer correct (in writing) the flaws in question within a period of no fewer than two business days.

2. If the Jury finds defects or flaws in the samples submitted and required in the Tender Documents, it must notify the tenderer to correct them within a period of no fewer than two business days.

3. If the Jury has doubts regarding the qualification documents or regarding one or more of the proposals submitted, it may request clarification in writing. These clarifications may not modify the contents of the proposal.

ARTICLE 77
(Disqualification of Tenderers)

If the identified flaws or omissions are not remedied in the correction procedures, the Jury shall proceed to the disqualification of the tenderers, giving reasons.

ARTICLE 78
(Evaluation and Qualification)

1. The Jury evaluates the tenderers’ proposals in accordance with the criteria established in the Tender Documents.

2. If the Jury finds mathematical errors in one or more of the non-disqualified proposals, it shall proceed to the correction of such errors in accordance with the Tender Documents and shall notify the Tenderers about the errors or omissions detected.

3. In Public Tenders, the evaluation of proposals and the qualification of tenderers shall be carried out in one single phase.

ARTICLE 79
(Ranking of Proposals)

1. In the ranking of proposals, any advantage not provided for in the Tender Documents shall not be considered, and all of the requirements contained in the Tender Documents must be met.
2. The ranking must be duly justified in accordance with the provisions of this Regulation and the Tender Documents.

3. A proposal must be disqualified if:
   a) It is presented after the time limit established in the Tender Documents;
   b) It does not meet the requirements provided for in the Tender Documents; or
   c) It presents unworkable or abusive conditions.

4. If the Tender Documents require the delivery of samples, their failure in tests and analyses shall determine the proposal’s disqualification.

ARTICLE 80
(Evaluation Report and Jury Recommendation)

After the phase of proposal evaluation, which includes, among other things, ranking and disqualification, the Jury prepares the report, in which it recommends to the Contracting Entity the best proposal evaluated in the Tender, for purposes of awarding the contract.

ARTICLE 81
(Cancellation of Public Tender)

1. The Contracting Entity must cancel the Public Tender if events occurring after the Tender Announcement are proven to modify the public interest in the contract.

2. When the Contracting Entity intends to cancel the Public Tender, it shall notify all tenderers of the reasons in fact and in law on which it bases its intention, so that they can comment on them within three business days.

3. After the time limit for the tenderers’ comments, the Contracting Entity shall notify them, giving reasons for the decision taken.

ARTICLE 82
(Invalidity)

1. The Contracting Entity shall verify the legality of the acts carried out in the administrative proceeding of the tender, prior to deciding on the award.

2. If the Contracting Entity finds any illegality in the light of the norms of this Regulation, it shall declare the Public Tender invalid.

3. When the Contracting Entity intends to invalidate the Public Tender, it shall notify all tenderers of the reasons in fact and in law on which it bases its intention, so that they may comment on them within three business days.

2. A classificação deve ser devidamente fundamentada de acordo com as disposições do presente Regulamento e dos respectivos Documentos de Concurso.

3. Deve ser desclassificada a proposta que:
   a) Seja apresentada fora do prazo definido nos Documentos de Concurso;
   b) Não cumpra com as exigências previstas nos Documentos de Concurso; ou
   c) Apresente condições inexequíveis ou abusivas.

4. Caso os Documentos de Concurso exijam a entrega de amostras, a reprovação em testes e análises das mesmas determina a desclassificação da respectiva proposta.

ARTIGO 80
(Relatório de Avaliação e Recomendação do Júri)

Encerrada a fase de avaliação das propostas, que inclui, de entre outras, a classificação e desclassificação, o Júri elabora o relatório, no qual recomenda à Entidade Contratante a melhor proposta apurada no Concurso, para efeitos de adjudicação.

ARTIGO 81
(Cancelamento do Concurso)

1. A Entidade Contratante deve cancelar o concurso, no caso de existência de eventos ocorridos após o Anúncio de Concurso que comprovadamente modificuem o interesse público na contratação.

2. Quando a Entidade Contratante pretenda cancelar o Concurso notificará a todos os concorrentes das razões de facto e de direito nas quais baseie a sua pretensão, para que estes se manifestem no prazo de três dias úteis.

3. Decorrido o prazo de manifestação dos concorrentes, a Entidade Contratante notificará fundamentando a decisão tomada.

ARTIGO 82
(Invalidade)

1. A Entidade Contratante deve verificar a legalidade dos actos praticados no procedimento administrativo de concurso, previamente à tomada de decisão de adjudicação.

2. Caso a Entidade Contratante verifique a existência de qualquer ilegalidade à luz das normas do presente Regulamento, deve declarar a invalidade do concurso.

3. Quando a Entidade Contratante pretenda invalidar o concurso notificará a todos os concorrentes das razões de facto e de direito nas quais baseie a sua pretensão, para que estes se manifestem no prazo de até três dias úteis.
4. After the time limit for the tenderers’ comments, the Contracting Entity shall notify them, giving reasons for the decision taken.

ARTICLE 83
(Award)

1. If the Contracting Entity neither cancels nor invalidates the Public Tender, it shall make a decision on the award, in accordance with the Jury’s recommendation.

2. The Contracting Entity shall communicate its decision on award to all tenderers within a period of no more than two business days.

ARTICLE 84
(Communication of Award, Invalidation or Cancellation)

1. If the Contracting Entity neither cancels nor invalidates the Public Tender, it shall make a decision on the award, in accordance with the Jury’s recommendation.

2. The Contracting Entity shall communicate its decision on award to all tenderers within a period of no more than two business days.

SECTION II
Tender with Pre-Qualification

ARTICLE 85
(Definition)

1. A Tender with Pre-Qualification is a restricted and specific contracting modality in which tenderers who have been qualified in a phase preliminary to the submission of their proposals participate.

2. The Pre-Qualification Tender shall be adopted when competition by Public Tender may be restricted because of the complexity of the qualification requirements and the costs involved in the preparation of proposals.

3. Only pre-qualified tenderers may participate in the phase of proposal submission, examination and classification.

4. The Tender with Pre-Qualification is subject to the subsidiary application of the Public Tender regime.

In Tenders with Pre-Qualification, tenderer qualification is assessed in a preliminary phase, before the tenderers submit their proposals. As a result, the government only contracts with tenderers of preapproved quality, who in turn provide goods, services or construction works of preapproved quality. This modality has been successfully used in sustainable public procurement experiences, as it allows the government to contract only with tenderers that comply with certain social and environmental standards.
### ARTICLE 86

**(Phases)**

The Tender with Pre-Qualification has the following phases, in the order indicated:

a) Preparation and launch;
b) Submission of qualification documents;
c) Correction and pre-qualification;
d) Complaint and appeal against the pre-qualification;
e) Restricted launch;
f) Proposal presentation;
g) Evaluation and correction;
h) Classification and jury recommendation;
i) Decision;
j) Award; and
k) Complaint and appeal.

### ARTICLE 87

**Tender Announcement and Documents**

1. To carry out a Tender with Pre-Qualification, the Contracting Entity must publish the Tender Announcement, pursuant to Articles 31 and 52 of this Regulation.
2. The Tender Documents must comply with Article 65 of this Regulation and must further define:
   a) A preliminary pre-qualification phase, with the indication of a period for the submission of qualification documents not shorter than 20 days from the date of the Tender Announcement; and
   b) A subsequent phase for the submission of proposals, examination and classification, with an indication of the period for the submission of proposals by the tenderers qualified in the preliminary phase; this may not be shorter than 20 days from the date of the request for proposals to the pre-qualified tenderers.
3. The request for proposals shall be issued by the Contracting Entity in a period not exceeding one year from the date of the final decision on pre-qualification.

Rather than taking place in a preliminary phase of each specific contracting proceeding, the pre-qualification of tenderers could be done on a routine basis, resulting in a government registry of pre-qualified tenderers. This could significantly reduce the duration of procurement of frequently procured goods and services.
ARTICLE 88
(Specific Competence of the Jury)

It falls within the Jury’s responsibilities, in addition to the provisions of Article 17 of this Regulation, to verify compliance of the tenderers with the qualification requirements and decide on their pre-qualification.

ARTICLE 89
(Disqualification of Pre-Qualified Tenderers)

1. If the Jury finds a supervening fact that affects the qualification conditions of a pre-qualified tenderer or if it finds that false statements were made, the pre-qualified tenderer shall be disqualified in the phase of submission, evaluation and classification of proposals.

2. The disqualification of a pre-qualified tenderer does not affect the validity of the tender.

SECTION III
Limited Tender

ARTICLE 90
(Definition)

1. The Limited Tender is a contracting modality based on value, as defined in No. 2 of this article, and intended for natural persons and micro, small and medium enterprises, registered in the single registry referred to in Article 58 on the date set for the submission of proposals and qualification documents.

2. The Limited Tender may be adopted when the estimated value of contracting does not exceed:

   a) Contracting of public works whose estimated value does not exceed MT3,500,000 (three million and five hundred thousand meticais); and

   b) Contracting of the supply of goods and rendering of services whose estimated value does not exceed MT1,750,000 (one million and seven hundred and fifty thousand meticais).

3. The amounts defined in items a) and b) of No. 2 shall be periodically adjusted by a joint act of the Ministers who supervise the areas of Finances, of Industry and Trade and of Public Works and Housing, respectively.

4. The Limited Tender is subject to the subsidiary application of the Public Tender regime.

ARTICLE 91
(Phases)

The Limited Tender has the following phases, in the order indicated:

a) Preparation and launch;
b) Presentation and opening of proposals and registration document;

c) Evaluation and correction;

d) Classification and jury recommendation;

e) Award; and

f) Complaint and appeal.

ARTICLE 92
(Tender Announcement and Documents)

1. To carry out a Limited Tender, the Contracting Entity must publish the Tender Announcement, pursuant to Articles 31 and 32 of this Regulation.

2. The Tender Documents must comply with Article 65 of this Regulation and must further define:

   a) The tenderers’ qualification requirements, verifiable by the registration documents;

   b) The time limits for:

      I. Submitting proposals, which may not be shorter than 12 days from the date of the Tender Announcement;

      II. Submitting a declaration by the tenderers that certifies that their respective registry data have not changed and that their respective registration documents have not expired.

3. The Tender Documents may require the submission of additional elements to prove the tenderers’ technical and economic qualifications.

ARTICLE 93
(Evaluation Criterion and Decision)

The criterion to be observed by the Jury in the evaluation, classification and recommendation on the decision to be taken in the Limited Tender is that of the lowest price, pursuant to Article 36 of this Regulation.

Given that the evaluation in Limited Tenders relies solely on a lowest price competition, appropriate safeguards must be included to ensure that tenderers and the goods, services and construction works provided by them comply with minimum standards of social and environmental performance.

SECTION IV
Two-Stage Tender

ARTICLE 94
(Definition)

1. The Two-Stage Tender is a contracting modality in which the tenderers offer, in the first phase, an initial technical proposal and, in the following phase, a final technical proposal and the price proposal.
2. The Two-Stage Tender may be carried out when:

a) The nature of the public works, goods or services does not allow the Contracting Entity to define in advance and in a precise manner the technical specifications that are most satisfactory and adequate to the public interest in question; or

b) The public interest may be satisfied in different ways.

3. The Two-Stage Tender is subject to the subsidiary application of the Public Tender procedures.

The Two-Stage Tender could be used by the government for a preliminary assessment, based on the initial technical proposal, of the technical proposals that are most appropriate from a sustainability standpoint, followed by a final analysis of technical and price proposals. As pointed out under item 2.a, this modality is particularly appropriate when the best (most sustainable) specification considering the public interest in question cannot be immediately determined.

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<th>ARTICLE 95</th>
<th>ARTIGO 95</th>
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<tbody>
<tr>
<td><strong>(Phases)</strong></td>
<td><strong>(Fases)</strong></td>
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<tr>
<td>The Two-Stage Tender has the following phases, in the order indicated:</td>
<td>O Concurso em Duas Etapas observa, pela ordem indicada, as seguintes fases:</td>
</tr>
<tr>
<td>a) Preparation and launch;</td>
<td>a) De preparação e lançamento;</td>
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<tr>
<td>b) Submission of initial technical proposals;</td>
<td>b) De apresentação de propostas técnicas iniciais;</td>
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<tr>
<td>c) Selection of initial technical proposals;</td>
<td>c) De seleção de propostas técnicas iniciais;</td>
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<tr>
<td>d) Discussion of initial technical proposals;</td>
<td>d) De discussão de propostas técnicas iniciais;</td>
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<tr>
<td>e) Definition of the common technical solution to all tenderers;</td>
<td>e) De definição da solução técnica comum a todos os intervenientes;</td>
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<tr>
<td>f) Complaint and appeal against the decision on the initial technical proposals;</td>
<td>f) De reclamação e recurso contra decisão sobre as propostas técnicas iniciais;</td>
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<tr>
<td>g) Restricted launch;</td>
<td>g) De lançamento restrito;</td>
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<tr>
<td>h) Submission of qualification documents and of final technical and price proposals;</td>
<td>h) De apresentação de documentos de qualificação e de propostas técnicas definitivas e de preço;</td>
</tr>
<tr>
<td>i) Evaluation and correction;</td>
<td>i) De avaliação e saneamento;</td>
</tr>
<tr>
<td>j) Classification and jury recommendation;</td>
<td>j) De classificação e recomendação do Júri;</td>
</tr>
<tr>
<td>k) Award; and</td>
<td>k) De adjudicação, e</td>
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<tr>
<td>l) Complaint and appeal.</td>
<td>l) De reclamação e recurso.</td>
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**ARTICLE 96**

**Tender Announcement and Documents**

1. To carry out a Two-Stage Tender, the Contracting Entity must publish a Tender Announcement, pursuant to Articles 31 and 32 of this Regulation.

**ARTIGO 96**

**Anúncio e Documentos de Concurso**

1. A realização de Concurso em Duas Etapas exige da Entidade Contratante a publicação de Anúncio do Concurso, nos termos previstos nos artigos 31 e 32 do presente Regulamento.
2. The Tender Documents must comply with Article 65 of this Regulation and define in a clear and precise manner the public interest sought by the Contracting Entity, the fundamental characteristics of the public works, goods and services, the technical alternatives admitted for the Tender object and furthermore:

a) The period for submitting initial technical proposals, which may not be shorter than 30 days from the date of publication of the Tender Announcement; and

b) The period for submission, by the selected tenderers, of the qualification documents and of the final technical proposal and the financial proposal, which may not be shorter than 30 days from the date of conclusion of the discussion phase.

3. The Tender Documents may establish the time limits of the discussion phase for definition of the common technical solution and of the tenderer selection phase.

ARTICLE 97
(Specific Competence of the Jury)

1. It falls within the competence of the Jury to examine, classify and select, accepting or rejecting, the initial technical proposals submitted by the tenderers in accordance with the criteria defined in the Tender Documents.

2. After the selection of initial technical proposals, the Jury promotes discussions with selected tenderers, on a date, time of day and place defined in the Tender Documents or that may be determined in the notification, for the purpose of defining the technical solution most appropriate to meet the public interest in question.

3. After the definition of the technical solution provided for in the previous number, the Jury shall notify the selected tenderers:

a) Of the minutes drawn up containing the most appropriate technical solution;

b) Of the time limit for submitting the final technical proposal and the financial proposal.

ARTICLE 98
(Evaluation Criteria and Decision)

1. The proposals shall be ranked in accordance with the criteria defined in the Tender Documents.

2. Final technical proposals that do not conform to the common technical solution must be disqualified.
ARTICLE 99
(Definition)

1. The Tender by Bids is the contracting modality for the procurement of common goods and services of immediate availability, in which the dispute between the interested parties occurs by means of proposals of successive bids in a public session.

2. Common goods and services are those whose standards of performance and quality may be objectively defined in the Tender Documents by means of specifications that are customary in the market.

3. It falls within the competence of the Functional Unit of Procurement Supervision to develop, update and distribute to the Contracting Entities the list of common goods and services that may be the object of procurement by means of Tenders by Bids.

4. The Minister who supervises the area of Finances shall regulate Tender by Bids by electronic means.

5. It falls within the competence of the Functional Unit of Procurement Supervision to implement and operationalize the electronic means for its use for the Contracting Entities.

6. The Tender by Bids is subject to the subsidiary application of the Public Tender regime.

ARTICLE 100
(Phases)

The Tender by Bids has the following phases, in the order indicated:

a) Preparation and launch;

b) Submission and opening proposals and of qualification documents;

c) Offering and closing of bids;

d) Qualification;

e) Award; and

f) Complaint and appeal.

ARTICLE 101
(Tender Announcement and Documents)

1. To carry out a Tender by Bids, the Contracting Entity must publish a Tender Announcement pursuant to Articles 31 and 32 of this Regulation.

ARTIGO 99
(Definição)

1. O Concurso por Lances é a modalidade de contratação para aquisição de bens e serviços comuns de disponibilidade imediata, na qual a disputa entre interessados é feita por meio de propostas de lances sucessivos em acto público.

2. Consideram-se bens e serviços comuns aqueles cujas normas de desempenho e qualidade podem ser objectivamente definidas nos Documentos de Concurso por meio de especificações usuais no mercado.

3. Compete à Unidade Funcional de Supervisão das Aquisições elaborar, actualizar e divulgar, para as Entidades Contratantes, a lista de bens e serviços comuns que podem ser objecto de aquisição por meio do Concorrimentos por Lances.

4. O Ministro que superintende a área das Finanças regulamentará a realização de Concurso por Lances por meio electrónico.

5. Compete à Unidade Funcional de Supervisão das Aquisições implementar e operacionalizar o meio electrónico para sua utilização pelas Entidades Contratantes.

6. Ao Concurso por Lances aplica-se, subsidiariamente, o regime do Concurso Público.

ARTIGO 100
(Fases)

O Concurso por Lances observa, pela ordem indicada, as seguintes fases.

a) De preparação e lançamento,

b) De apresentação e abertura de propostas e de documentos de qualificação;

c) De apresentação e encerramento de lances;

d) De qualificação;

e) Adjudicação; e

f) De reclamação e recurso.

ARTIGO 101
(Anúncio e Documentos de Concurso)

1. A realização de Concurso por Lances exige da Entidade Contratante a publicação de Anúncio do Concurso, nos termos previstos nos artigos 31 e 32 do presente Regulamento.
2. The Tender Documents must comply with Article 65 of this Regulation and must further define:

a) The period for submitting proposals, which may not be shorter than 15 days from the date of publication of the Tender Announcement;

b) The date of opening of proposals and submission of bids;

c) The criteria for the selection of tenderers;

d) The criterion for establishing the difference of values from the best proposal for the tenderers to participate in the bidding phase; and

e) The waiver of the provisional guarantee.

ARTICLE 102
(Specific Responsibilities of the Jury)

It falls within the responsibilities of the Jury:

a) To receive the proposals of tenderers and to proceed to their opening in accordance with the criteria defined in the Tender Documents;

b) To determine participation in the bidding phase of the tenderers with proposals situated in the range referred to in item d) of No. 2 of Article 101;

c) To follow and regulate the offering of bids;

d) To evaluate the qualification documents of the tenderer who wins the bidding phase; and

e) To evaluate the qualification documents of the tenderer with the second-lowest price, in the event that the winning tenderer is excluded by lack of qualification in accordance with the Tender Documents, and, successively, until the winning tenderer is declared.

ARTICLE 103
(Bids)

1. The bidding phase is carried out by the submission of new and successive verbal proposals by the tenderers who wish to do so, in the bidding session, until a winning tenderer is declared.

2. While there are interested tenderers, the submission of new and successive bids may not be forbidden.

ARTICLE 104
(Competent Authority)

The Competent Authority, representing the Contracting Authority, must be present at the opening of the proposals, in the bidding phase, in the declaration of the winning tenderer and the award of the contract.
ARTICLE 105
(Evaluation Criterion and Decision)

The Tender by Bids is evaluated only under the lowest-price criterion, pursuant to Article 36 of the present Regulation.

Given that the evaluation in Tenders by Bids relies solely on a lowest-price competition, appropriate safeguards must be included to ensure that tenderers and the goods, services and construction works provided by them comply with minimum standards of social and environmental performance.

SECTION VI
Small-Scale Tender

ARTICLE 106
(Definition)

The Small-Scale Tender is the contracting modality whose price estimate is lower than 15 per cent of the limit established pursuant to Nos. 2 and 3 of Article 90 of this Regulation, and restricted to natural persons, micro and small enterprises.

ARTICLE 107
(Phases)

The Small-Scale Tender follows the same phases defined for the Public Tender, pursuant to Article 62 of this Regulation.

ARTICLE 108
(Tender Announcement and Documents)

1. To carry out a Small-Scale Tender, the Contracting Entity must publish a Tender Announcement, pursuant to Articles 31 and 32 of this Regulation or by means of advertisement on the radio and a tender published in the Contracting Entity’s headquarters.

2. In the Tender Documents, the qualification documents provided for in Articles 22, 23 and 25 of this Regulation may be waived, in full or in part; the Contracting Entity must define and expressly indicate in the Tender Announcement and Documents the qualification requirements waived in full or in part.

3. The certificate of release and discharge issued by the Fiscal Administration may be replaced with proof of payment of taxes by means of income tax withholding or by other means defined under tax law.

4. The Tender Documents must determine a reasonable and sufficient period of no shorter than 12 days for the presentation of proposals.

5. The Contracting Entity may adopt simplified Tender Documents for the contracting of public works, the supply of goods and the rendering of small-scale services.
| ARTICLE 109  
( Guarantee) | ARTIGO 109  
( Garantia) |
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<tr>
<td>In the contracting of public works, the supply of goods and the rendering of small-scale services, advance payment is allowed, without the need for the provision of a guarantee, to a maximum of 30 per cent of the Contract value or the budget for the goods necessary to the initial phase of the public works, whichever is lower.</td>
<td>Na contratação de empreitada de obras, fornecimento de bens e prestação de serviços de pequena dimensão é permitido o pagamento de um adiantamento sem a apresentação [de garantia], até ao limite de trinta por cento do valor do Contrato ou do orçamento dos materiais necessários à fase inicial da obra, o que for menor.</td>
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This loosening of the guarantees required from tenderers is welcome in small-scale tenders, as it effectively enables participation of natural persons and micro and small Enterprises.

| ARTICLE 110  
( Contract) | ARTIGO 110  
( Contrato) |
<table>
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<tr>
<td>The Contracting Entity shall adopt simplified written instruments in cases of contracting public works, goods and small-scale services.</td>
<td>A Entidade Contratante deve adotar instrumentos escritos simplificados nos casos de contratação de obras, bens e serviços de pequena dimensão.</td>
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| ARTICLE 111  
( Evaluation Criterion and Decision) | ARTIGO 111  
( Critério de Avaliação e Decisão) |
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<tr>
<td>The criterion to be followed by the Jury in the decision, ranking and recommendation on the decision to make in the small-scale Tender is that of the lowest price, provided for in Article 36 of this Regulation.</td>
<td>O critério a observar pelo júri na avaliação, classificação e recomendação da decisão a tomar no Concurso de Pequena Dimensão é o do menor preço, previsto nos termos do artigo 36 do presente Regulamento.</td>
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</table>

Given that evaluation in small-scale Tenders relies solely on a lowest-price competition, appropriate safeguards must be included to ensure that tenderers and the goods, services and construction work provided by them comply with minimum standards of social and environmental performance.

| ARTICLE 112  
( Acceptance of Goods or Services) | ARTIGO 112  
( Recepção de Bens ou Serviços) |
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<tbody>
<tr>
<td>In exceptional instances, in the case of contracting the supply of goods and the rendering of small-scale services, when there is a proven shortage or lack of qualified personnel, the acceptance team may be replaced by two staff designated by the Contracting Entity.</td>
<td>Excepcionalmente, no caso de contratação de fornecimento de bens e prestação de serviços de pequena dimensão, quando comprovada a escassez ou falta de pessoal qualificado, a equipe de recepção poderá ser substituída por dois funcionários designados pela Entidade Contratante.</td>
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**SECTION VII**
Direct Contracting

**ARTICLE 113  
( Definition)**

1. Direct Contracting is the contracting modality applicable whenever contracting under any of the other modalities defined in this Regulation is unfeasible or inconvenient.

2. Direct Contracting is applicable in the following circumstances:

a) If the object of contracting may only be obtained from one single contractor of public works, supplier of goods or service provider, or if the Contracting Entity has previously contracted the purchase of goods or the rendering of services from an entity and it is justified for the maintenance of a uniform standard;
2. Direct Contracting is applicable in the following circumstances:

a) If the object of contracting may only be obtained from one single contractor of public works, supplier of goods or service provider, or if the Contracting Entity has previously contracted the purchase of goods or the rendering of services from an entity and it is justified for the maintenance of a uniform standard;

b) In an emergency situation that may cause irreparable damage (or damage that is difficult to repair) to the State or to society, and only to satisfy the object of the emergency and for the period of its duration;

c) In times of war or serious disturbance of public order;

d) If a previous tender was not effective due to lack of interest of tenderers or for the disqualification of all tenderers, and if it may not be repeated without harming the public interest;

e) If the object of contracting concerns national defense and security, especially in the execution of confidential military construction works, uniforms and their complements, acquisition, repair and maintenance of military equipment and of exclusive use of the Defense and Security Forces;

f) If the object of contracting is destined to supply military ships, boats, air units or troops and their means of transportation, when eventually stationed for a short period in ports, airports or other locations different from those of their nationality and only for those exigent circumstances arising from the emergency and for the period of its duration;

g) If the Contracting Entity is the State Information and Security Service; and

h) In the contracting of leases of immovable property.

3. Direct Contracting is also applicable when the estimated value of the contracting is less than 5 per cent of the limit established pursuant to Nos. 2 and 3 of Article 90 of this Regulation; at least three quotes must be gathered to justify the reasonableness of the price, and of the choice of contractor, supplier or service provider.

4. Splitting the estimated value of the contracting in order to implement Direct Contracting is forbidden.

ARTICLE 114
(Phases)

Direct Contracting has the following phases, in the order indicated:

a) Preparation;

b) Receipt of proposal;

2. O Ajuste Directo aplica-se nas seguintes circunstâncias:

a) Se o objecto da contratação só puder ser obtido de um único empreiteiro de obras, fornecedor de bens ou prestador de serviços ou se a Entidade Contratante já tiver anteriormente contratado a aquisição de bens ou prestação de serviços de uma entidade e se justifique a manutenção da uniformidade do padrão;

b) Em situação de emergência, que possa causar danos irreparáveis ou de difícil reparação ao Estado ou à sociedade e apenas para satisfazer o objecto da emergência e pelo prazo da sua duração;

c) Em período de guerra ou grave perturbação da ordem pública;

d) Se em concurso anterior, o mesmo ficou deserto por falta de comparência de concorrentes ou por desclassificação de todos os concorrentes e não possa ser repetido sem prejuízo do interesse público;

e) Se o objecto da contratação respeitar à defesa e segurança nacional, especialmente na execução de obras militares sigilosas, fardamento e seus complementos, aquisição, reparação e manutenção de equipamento militar e de uso exclusivo das Forças de Defesa e Segurança;

f) Se o objecto da contratação se destinar ao abastecimento de navios, embarcações, unidades aéreos militares ou tropas e seus meios de deslocamento, quando em estádio eventual e de curta duração em portos, aeroportos ou localidades diferentes dos da sua nacionalidade e apenas o objecto da emergência e pelo prazo da sua duração;

g) Se a Entidade Contratante for o Serviço de Informações e Segurança do Estado; e

h) Na contratação de arrendamento.

3. O Ajuste Directo é ainda aplicável sempre que o valor estimado de contratação for inferior a cinco por cento do limite estabelecido nos termos dos nos. 2 e 3 do artigo 90 do presente Regulamento, devendo-se juntar pelo menos três cotas para justificar a razoabilidade do preço, da escolha do empreiteiro, fornecedor ou prestador de serviços.

ARTIGO 114
(Fases)

O Ajuste Directo observa, pela ordem indicada, as seguintes fases:

a) De preparação;

b) De recebimento de proposta;
c) Acceptance of proposal;
d) Verification of the sufficiency of the qualification for the performance of the object, whenever necessary; and
e) Award.

ARTICLE 115
(Tender Announcement and Documents)
1. In Direct Contracting, a specific Tender Announcement and Documents are not required, except in the contracting of leasing, in which the Contracting Entity must publish its intention to contract, pursuant to Article 32 of this Regulation.

2. The template contract for the lease of immovable property [shall be approved] by a joint act of the Ministers who supervise the areas of Finances and of Public Works and Housing.

ARTICLE 116
(Duties of the Contracting Entity)
The Contracting Entity shall:
a) Give reasons for the choice of modality;
b) Verify the contractor’s or supplier’s qualification;
c) Justify the choice of the Contracted Party; and
d) Justify the reasonability of the price and the supply conditions.

ARTICLE 117
(Evaluation Criterion and Decision)
In Direct Contracting, the Contracting Entity shall pursue the best contracting conditions and adopt market conditions as parameters whenever possible.

ARTICLE 118
(Mandatory Communication)
1. The Functional Unit of Procurement Supervision must be notified of the use of Direct Contracting.

2. Communications regarding the Defense and Security Forces are made to the Functional Unit of Procurement Supervision.

When contracting under the Direct Contracting modality, in which the Contracting Entity has significant degree of freedom of negotiation with the Contracted Party, the government should make sure to adopt sustainability parameters while pursuing the best contracting conditions in the market.
CHAPTER III
Contracting of Consulting Services

SECTION I
General Provisions

ARTICLE 119
(General Rules)

1. The contracting of Consulting Services must follow a previous selection process, except for the cases provided for in this Regulation.

2. In the contracting of Consulting Services, the Contracting Entity must seek quality services, by a fair competition, in accordance with the modalities provided for in this Regulation.

3. The Consultant shall act and execute the services with diligence, professionalism and competence, in the strict interests of the Contracting Entity.

4. The consulting contract must ensure the transfer of knowledge from the consultant to the counterpart designated by the Contracting Entity.

In contracting consultants, the Contracting Entity must bear in mind that the quality of the consulting services to be rendered and the diligence, professionalism and competence of the consultant include sustainability considerations, regarding the qualifications of the consultant, the manner in which services are rendered and the benefits they generate to the government and to the public interest.

The Regulation governs contracting of consultants at length (Chapter III includes Articles 119 through 139), and the specificities of its provisions on the matter are not analyzed in depth here.

ARTICLE 120
(Consultants)

The consulting services may be contracted to natural persons, legal persons, whether public or private, including universities and research institutes.

ARTICLE 121
(Conflict of Interest)

1. Consultants who are in a conflict of interest may not render consulting services.

2. The term conflict of interest describes situations that preclude the Consultant from offering professional advice in an objective and impartial manner and giving preference to the interests of the Contracting Entity, namely:

a) The Consultant has participated, directly or indirectly in any capacity, in the preparation of the terms of reference and other documents related to the subject matter of contracting;

b) The Consultant has been contracted by the Contracting Entity for the preparation or execution of a task, relative to the subsequent rendering of services related to the same task, except in cases of continuation of prior consulting services rendered by the Consultant;
c) The Consultant is contracting for a service that, because of its nature, conflicts with another service rendered by him or her;

d) The Consultant has partners, directors, senior board members or principal technical staff who belong to the permanent or temporary staff of the Contracting Entity; and

e) The Consultant maintains a contractual relationship, whether directly or by means of third parties, with the Contracting Entity or of kinship as provided for in item e) of Article 21, which allows him or her to influence the decisions.

3. The verification of a situation of conflict of interest shall result in the disqualification and rejection of the proposal presented by the Consultant, or in the invalidity of the contract.

ARTICLE 122
(Phases of the Selection Process)

The process for the selection of consultants has the following phases, in the order indicated:

a) Preparation and launch;

b) Submission of technical and financial proposals;

c) Opening and evaluation of technical proposals;

d) Jury recommendation;

e) Decision on the evaluation of technical proposals;

f) Complaint and appeal against the evaluation of technical proposals;

g) Opening and evaluation of financial proposals, whether simple or combined, depending on the applicable case;

h) Jury recommendation;

i) Decision on the evaluation of financial proposals;

j) Contract negotiation, when necessary;

k) Decision;

l) Complaint and appeal; and

m) Award.

ARTICLE 123
(Terms of Reference)

“Terms of reference” refers to the document that clearly defines objectives, the scope of services, time limits, obligations and liabilities of the parties, services sought, desired qualifications, and provision of available information, aiming at furnishing the elements necessary for the development of proposals by consultants.
ARTICLE 124
(Budget)

The budget must be based on the Contracting Entity’s assessment of the resources necessary to execute the services.

ARTICLE 125
(Publicity)

1. The Contracting Entity must publish the announcement in the newspaper with the largest circulation in the country, or in another communication medium that is better justified, requesting that tenderers express their interest.

2. The requested information must be limited to the minimum necessary to determine the consultants’ qualification that is appropriate to the object to be contracted.

3. Time limits must be sufficient for the preparation of replies by consultants and may not be shorter than 12 days.

ARTICLE 126
(Short List)

1. Participation in the tender process is restricted to a short list prepared by the Contracting Entity, in which a minimum of three and a maximum of six consultants are selected, for the same object to be contracted.

2. The short list must be prepared considering the consultants that express their interest, in accordance with No. 1 of Article 125 of this Regulation, and possess the necessary qualifications; those integrating the registry may be resorted to when the number referred to in the previous number is not attained.

3. In preparing the short list, the Contracting Entity must always consider at least one-third of national consultants, except in the cases where a lack of consultants qualified for the object of contracting has been demonstrated.

4. The Contracting Entity must prepare a report, including reasons, on the choice of the consultants forming the short list.

ARTICLE 127
(Tender Documents)

1. The Tender Documents for the selection of consultants must contain the following:

   a) Letter of Request for Proposals, which must indicate intention of contracting the services, date, time of the day, place of receipt and opening of proposals;

2. The Tender Documents for the selection of consultants must contain the following:

   a) Carta de Solicitação de Propostas, que deverá indicar a intenção da contratação dos serviços, a data, hora, local de recepção e abertura das propostas;
1. The Tender Documents for the selection of consultants must contain the following:

a) Letter of Request for Proposals, which must indicate intention of contracting the services, date, time of the day, place of receipt and opening of proposals;

b) Information to Consultants, which must contain the elements necessary to the preparation of their proposals, selection criterion, factors and respective weighting of the technical and financial proposals, as well as the minimum score for selection;

c) Terms of Reference; and

d) Draft Contract.

2. The use of template Tender Documents, which form an integral part of this Regulation, is mandatory.

ARTICLE 128
(Time Limits)

1. The Tender Documents for the selection of consultants must determine a reasonable and sufficient period for consultants to prepare their proposals, in accordance with the nature and complexity of the services, which may be neither shorter than 31 days nor longer than 90 days.

2. Consultants may request clarifications regarding the Tender Documents, in writing, in the first third of the period for submission of proposals, and the Contracting Entity must reply in writing, sending a copy of the response to every consultant in the short list.

SECTION II
Contracting Modalities

Subsection I
Legal persons

ARTICLE 129
(General Regime)

1. The general regime for the contracting of legal persons, included in the short list, for the rendering of consulting services is based on the quality and on the price of the services to be contracted.

2. Selection based on quality and price of the services to be contracted is the standard modality for the selection of consultants who are legal persons, included in the short list, whose criterion is based on the combined evaluation of the quality of the technical proposal and of the price quote for rendering the services.
3. The Tender Documents must establish the relative weighting attributed to quality and price, in view of the nature and complexity of the service; price may not be attributed a weighting higher than 30 points of a total of 100.

4. The proposals shall be ranked in accordance with the combination of the scores attributed to the technical and financial proposals, in accordance with the weighting referred to in the previous number.

5. The score of each tenderer’s technical proposal shall be obtained from the relationship between the score attributed to each of the proposals and the proposal that has received the highest score.

6. The score of each tenderer’s financial proposal shall be obtained from the relationship between the lowest price between the proposals submitted and the price submitted under each proposal.

7. The consultant who obtains the highest overall score, combining the technique and price scores, and after the application of the weight referred to in No. 3, shall be invited to the subsequent negotiation of the contract.

8. The Jury must prepare a report based on the evaluation of the technical and financial proposals.

ARTICLE 130
(Exceptional Regime)

1. Whenever it is convenient to public interest and the requirements established under this Regulation are met, the Managing Unit of Procurement Execution shall, giving reasons, suggest to the Competent Authority the application of the exceptional regime for the contracting of consulting services.

2. The decision declaring the verification of requirements for contracting under the exceptional regime and determining the application of such regime to the contracting of consulting services must be justified in writing by the Competent Authority.

3. The modalities for contracting under the exceptional regime are based on:
   a) Quality;
   b) Maximum price;
   c) Lowest price;
   d) Consultant’s qualifications;
   e) Selection of a natural person; and
   f) Direct contracting.

3. Nos Documentos de Concurso deve ser fixado o peso relativo atribuído à qualidade e ao preço, tendo em vista a natureza e complexidade do serviço, cabendo ao preço um peso não superior a trinta pontos de um total de cem.

4. As propostas serão classificadas de acordo com a conjugação das notas atribuídas às propostas técnica e financeira, com observância dos pesos referidos no número anterior.

5. A nota da proposta técnica de cada concorrente será obtida a partir da relação entre a pontuação atribuída a cada uma das propostas e a proposta que tenha obtido a maior pontuação.

6. A nota da proposta financeira de cada concorrente será obtida a partir da relação entre o menor preço entre as propostas apresentadas e o preço apresentado em cada proposta.

7. O consultor que obtiver a maior nota no total, conjugando as notas de técnica e de preço, e aplicação do peso referido no no. 3, será convidado para a subsequente negociação do contrato.

8. O júri deve elaborar relatório fundamentado sobre a avaliação das propostas, técnica e financeira.

ARTIGO 130
(Regime Excepcional)

1. Sempre que se mostre conveniente ao interesse público e estejam presentes os requisitos fixados no presente Regulamento, a Unidade Gestora Executora das Aquisições deve, fundamentando, propor à Autoridade Competente a aplicação de regime excepcional para contratação de serviços de consultoria.

2. A decisão que declara verificados os requisitos de contratação em regime excepcional e que determina a aplicação deste regime para contratação de serviços de consultoria deve ser fundamentada por escrito pela Autoridade Competente.

3. As modalidades de contratação em regime excepcional são baseadas:
   a) Na qualidade;
   b) Em preço máximo;
   c) Em menor preço;
   d) Nas qualificações do consultor;
   e) Seleção de pessoa singular; e
   f) Ajuste directo.
ARTICLE 131
(Selection Based on Quality)

1. Selection based on quality is the contracting modality in which the evaluation is based on the quality of the technical proposal.

2. The application of selection based on quality must be justified by the Managing Unit of Procurement Execution and depends upon prior authorization by the Competent Authority.

3. The Tender Documents must establish that consultants forming the short list submit their technical and price proposals simultaneously, in separate envelopes.

4. After determining the best technical proposal, and complying with the formalities provided for in this Regulation, the consultant who has submitted the best technical proposal acceptable, in accordance with the Tender Documents, shall be invited for the opening of the envelope containing the financial proposal.

5. Pursuant to the provisions in this Regulation, the financial proposal shall be subject to relevant negotiations.

6. The Jury shall prepare a report, giving reasons, on the evaluation of proposals.

ARTICLE 132
(Selection Based on Maximum Price)

1. Selection based on maximum price is the contracting modality in which the evaluation is based on the best technical proposal, in accordance with the limits of the maximum price established in the Tender Documents.

2. This modality is applicable when the services are not complex and the maximum price can be established.

3. The Tender Documents must indicate the maximum price, inviting consultants who form a short list to submit their best technical and financial proposals, in separate envelopes, within the limits of the maximum price.

4. In the selection based on maximum price, the Contracting Entity must ensure this price is sufficient to render the services provided for in the Terms of Reference.

ARTIGO 131
(Selecção baseada na qualidade)

1. A selecção baseada na qualidade é a modalidade de contratação na qual a avaliação tem como base a qualidade da proposta técnica.


3. Os Documentos de Concurso devem estabelecer que os consultores integrantes de uma lista curta apresentem as propostas técnica e de preço, simultaneamente, em envelopes separados.

4. Após a determinação da melhor proposta técnica, e observadas as formalidades previstas no presente Regulamento, o consultor que tenha submetido a melhor proposta técnica aceitável, em conformidade com os Documentos de Concurso, deverá ser convidado para a abertura do envelope contendo a proposta financeira.

5. Observadas as disposições do presente Regulamento, a proposta financeira estará sujeita às negociações pertinentes.

6. O júri deve elaborar relatório fundamentado sobre a avaliação das propostas.

ARTIGO 132
(Selecção baseada em preço máximo)

1. A selecção baseada em preço máximo é a modalidade de contratação na qual a avaliação tem como base a melhor proposta técnica, observados os limites do preço máximo estabelecido nos Documentos de Concurso.

2. Esta modalidade é aplicável quando os serviços não forem complexos e o preço máximo puder ser estabelecido.

3. Os Documentos de Concurso indicarão o preço máximo, convidando os consultores integrantes de uma lista curta à apresentação de suas melhores propostas técnica e financeira, em envelopes separados, dentro dos limites do preço máximo.

4. Na selecção baseada no preço máximo a Entidade Contratante deve assegurar que esse preço é suficiente para execução dos serviços previstos nas Termos de Referência.
5. After the evaluation of the technical proposals, and in accordance with the provisions of this Regulation, the price envelopes of the proposals that have obtained the minimum score established in the Tender Documents shall be opened in a public session.

6. Proposals that exceed the maximum price shall be disqualified. The consultant who has submitted the best technical proposal, within the maximum price established in the Tender Documents, shall be selected and invited to negotiate the contract.

7. The jury shall prepare a report, giving reasons, on the evaluation of proposals.

ARTICLE 133
(Selection Based on Lowest Price)

1. Selection based on lowest price is the contracting modality in which the evaluation is based on the proposal with the lowest price among the technical proposals that have obtained the minimum score established in the Tender Documents.

2. This modality is applicable to the contracting of services with existing standards or established routines.

3. The Tender Documents must establish that consultants forming a short list shall present a technical and financial proposal simultaneously, in separate envelopes.

4. The evaluation criteria and the minimum score required contained in the Tender Documents must ensure the minimum quality necessary for the performance of the services.

5. After the evaluation of the technical proposals and in accordance with the provisions of this Regulation, the price envelopes of the proposals that have obtained the minimum score established in the Tender Documents shall be opened.

6. The consultant that has submitted the proposal with the lowest price shall be selected and invited to sign the contract.

7. The Jury shall prepare a report, giving reasons, on the evaluation of proposals.

ARTICLE 134
(Selection Based on Consultant Qualifications)

1. Selection based on the consultant’s qualifications is the modality of contracting in which the evaluation is based on the comparison between the qualifications of at least three consultants.

2. This modality is applicable to the contracting of small consulting services, when the preparation and evaluation of competitive proposals is not justified.

5. Após a avaliação das propostas técnicas, e observadas as disposições do presente Regulamento, serão abertos em sessão pública os envelopes de preço das propostas que tenham obtido a pontuação mínima estabelecida nos Documentos de Concurso.

6. As propostas que ultrapassarem o preço máximo serão desclassificadas. O consultor que tenha submetido a melhor proposta técnica, dentro do preço máximo estabelecido nos Documentos de Concurso deverá ser selecionado e convidado a negociar o contrato.

7. O júri deverá elaborar relatório fundamentado sobre a avaliação das propostas.

ARTIGO 133
(Selecção baseada em menor preço)

1. A seleção baseada em menor preço é a modalidade de contratação na qual a avaliação tem como base a proposta de menor preço, entre as propostas técnicas que obtiveram a pontuação mínima estabelecida nos Documentos de Concurso.

2. Esta modalidade é aplicável para contratação de serviços com padrões existentes ou rotinas estabelecidas.

3. Os Documentos de Concurso deverão estabelecer que os consultores integrantes de uma lista curta apresentarão proposta técnica e financeira, simultaneamente, em envelopes separados.

4. Os critérios de avaliação e a nota mínima exigida, constantes dos Documentos de Concurso, devem assegurar a qualidade mínima necessária para a execução dos serviços.

5. Após a avaliação das propostas técnicas e observadas as disposições do presente Regulamento, serão abertos os envelopes de preço das propostas que tenham obtido a pontuação mínima estabelecida nos Documentos de Concurso.

6. O consultor que tenha submetido a proposta de menor preço deverá ser selecionado e convidado a celebrar o contrato.

7. O Júri deve elaborar relatório fundamentado sobre a avaliação das propostas.

ARTIGO 134
(Selecção baseada nas qualificações do consultor)

1. A seleção baseada nas qualificações do consultor é a modalidade de contratação na qual a avaliação tem como base a comparação da qualificação de pelo menos três consultores.

2. Esta modalidade é aplicável para contratação de pequenos serviços de consultoria, quando não se justificar a preparação e avaliação de propostas competitivas.
3. The Contracting Entity shall prepare the Terms of Reference, request that consultants express their interest and provide information regarding their experience and competence relevant to the provision of the service, prepare a short list and select the consultant with the most appropriate qualification and references.

4. The selected consultants shall be invited to present a technical and financial proposal and to negotiate the contract.

5. The jury shall prepare a report, giving reasons, on the evaluation of proposals.

ARTICLE 135
(Direct Contracting)

1. Direct Contracting is only applicable in exceptional circumstances and advantageous conditions in comparison with competitive procedures.

2. The following are considered advantageous situations in comparison with competitive procedures:
   a) Services involving the continuation of prior works rendered by the same consultant;
   b) Development of the competitive procedure in timelines prejudicial to the public interest;
   c) Services whose estimated price is lower than 5 per cent, pursuant to No. 2 of Article 90 of this Regulation; and
   d) Where there exists only one qualified consultant or only one with relevant experience to render the service.

3. Direct Contracting must be duly justified by the Managing Unit of Procurement Execution, except for the cases provided for in item c) of No. 3 above.

Subsection II
Natural Persons

ARTICLE 136
(Selection of Natural Persons)

1. Selection of natural persons is applicable for consulting services in which the person’s experience and qualifications are the main requirements.

2. Natural persons are selected based on the comparison of at least three candidates among those who show an interest in rendering the services; the Contracting Entity may select from registered consultants or from consultants who have already rendered satisfactory services to same.
3. Individual consultants contracted must meet all the relevant qualification and capacity requirements to perform the task.

4. Capacity shall be measured based on academic history, experience and, when necessary, knowledge of local conditions and other relevant factors.

5. The selected consultant shall be invited to submit technical and financial proposals, prior to the signing of the contract.

**SECTION III**

**ARTICLE 137**

(Evaluation Criteria)

1. The evaluation of technical proposals must take into account the characteristics of the services to be contracted in accordance with the following criteria:

   a) Consultant’s experience in rendering the service;
   
   b) Quality of the proposed methodology;
   
   c) Qualification of the key staff proposed;
   
   d) Transfer of knowledge, when applicable; and
   
   e) Degree of participation of nationals among the key staff used in the rendering of the service.

2. The criteria indicated in the previous number shall be detailed in the subcriteria, as they may be relevant for the services to be contracted, with the attribution of the respective scores.

3. The technical evaluation elements may be expressed by a mathematical formula that takes into account, in an objective manner, the variables provided for in No. 1 of this article.

4. The evaluation criteria of the technical proposals provided for in No. 1 of this article must be established taking into account the following parameters, totaling 100 points:

   a) Consultant’s experience: from 5 to 10 points;
   
   b) Methodology: from 20 to 50 points;
   
   c) Key staff: from 30 to 60 points;
   
   d) Transfer of knowledge: from zero to 15 points; and
   
   e) Participation of national consultants: from zero to 10 points.

5. The score attributed to the elements of technical evaluation and to the decision rejecting them must be duly justified in the evaluation report.
ARTICLE 138
(Negotiations)

1. Negotiations comprise discussions on the Terms of Reference, methodology, personnel, expenses and contractual conditions of the Contracting Entity and of the Consultant. These discussions may not result in substantial modification of the original Terms of Reference or of the contract terms, so that they do not affect the quality of the final deliverable, the price and the fundamental aspects that have been the object of evaluation.

2. Except in exceptional circumstances, with due explanation, the unit prices shall not be subject to negotiation, as they have been used as a factor in the selection of the price proposal.

3. The final Terms of Reference and the aspects that are subject to negotiation will be included in the contract.

4. Except in exceptional cases, outside of the Consultant's control, the replacement of key staff shall result in the rejection of the proposal. Where permitted, replacements must be professionals of equal or higher qualifications.

5. If negotiations are not satisfactory, the Contracting Entity shall conclude the negotiations, notifying the consultant in writing and inviting the subsequently ranked consultant. The notification on the conclusion of negotiations must indicate the reasons on which it is based.

6. All negotiations shall be recorded in minutes and duly signed by the parties.

ARTICLE 139
(Types of Contract)

1. Consulting services must comply with the following contracting regimes:

   a) By global price: applicable when the scope of services is linked to the delivery of a defined product and its payment is fixed, based on the completion of stages or on the delivery of the product;

   b) Based on time: applicable when the scope of services is not linked to the delivery of a defined product nor is its payment fixed based on a price per unit of time.

2. The use of other types of contract depends on prior authorization by the Functional Unit of Procurement Supervision.

ARTIGO 138
(Negociações)

1. As negociações compreendem discussões a respeito dos Termos de Referência, metodologia, pessoal, despesas e condições contratuais da Entidade Contratante e do Consultor. Destas discussões não poderão resultar modificações substanciais dos Termos de Referência originais ou dos termos do contrato, por forma a não afectar a qualidade do produto final, o preço e os aspectos fundamentais que foram objecto da avaliação.

2. Salvo circunstâncias excepcionais, devidamente fundamentadas, os preços unitários não serão objecto de negociação, visto terem sido utilizados como factor de selecção na proposta de preço.

3. Os Termos de Referência finais e os aspectos objecto de negociação serão incorporados ao contrato.

4. Salvo nos casos excepcionais, fora do controlo do Consultor, a substituição de pessoal chave resultará na rejeição da proposta. Nos casos permitidos, a substituição deve ser feita por profissional de igual ou maior qualificação.

5. No caso das negociações não resultarem satisfatórias, a Entidade Contratante encerrará as negociações notificando por escrito ao consultor e convidando a classificada seguinte. A notificação do término das negociações deverá indicar as razões que a fundamentam.

6. Todas as negociações serão registadas em acta e devidamente assinadas pelas partes.

ARTIGO 139
(Tipos de Contrato)

1. Os serviços de consultoria obedecem aos seguintes regimes de contratação:

   a) Por preço global: aplicável quando o escopo dos serviços estão vinculados à entrega de produto definido e cujo pagamento é fixado, com base no cumprimento de etapas ou entrega do produto;

   b) Baseado no tempo: aplicável quando o escopo dos serviços não estão vinculado à entrega de produto definido e cujo pagamento é fixado com base em preço por unidade de tempo estabelecido.

2. A utilização de outros tipos de contrato depende de prévia autorização da Unidade Funcional de Supervisão das Aquisições.
CHAPTER IV
Complaints and Appeals

ARTICLE 140
(Admissibility of Complaints)

1. The acts of qualification, disqualification and award provided for in this Regulation may be the object of a complaint to the Contracting Entity.

The Regulation provides meaningful opportunities for the tenderers to review the contracting proceedings and file complaints and appeals against the most relevant decisions taken throughout them:

• The first step for a tenderer is the complaint, filed with the Contracting Entity.
• The second step is the hierarchic appeal, filed with the Minister that supervises the Contracting Entity, the Provincial Governor and the District Administrator, regarding the central, provincial and district levels, respectively.
• The third and final step is the judicial appeal, filed with the Judiciary.

2. Complaints must be submitted in writing within three business days of the date of tenderers’ notification.

3. During the complaint period, tenderers may have free access to the administrative proceeding of the tender.

4. It falls within the competence of the Jury to send the complaint as well as its opinion to the Contracting Entity within no more than three business days from receipt of the complaint.

5. The Contracting Entity shall issue a final decision on the complaint within three days of the date of its receipt.

6. The complaint has a staying effect on the tender proceedings.

ARTICLE 141
(Complaint Fee)

1. As a condition of admissibility of the complaint, the tenderer must provide a guarantee, as security, the value of which does not exceed 0.25 per cent of the estimated contracting value, limited to MT125,000.00 (one hundred and twenty-five thousand meticais), which may be adjusted by means of a decision of the Minister who supervises the area of Finances.

2. The amount collected must be restored to the tenderer if the complaint is decided in favor of the tenderer and, if not, reverted to the Contracting Entity.

ARTICLE 142
(Admissibility of Hierarchical Appeal)

1. A hierarchical appeal, among others, may be filed against the acts of the Contracting Entity with the Minister that supervises the Contracting Entity, the Provincial Governor and the District Administrator, regarding the central, provincial and district levels, respectively.
2. The hierarchical appeal may be based on the following:
   a) A breach of norms of this Regulation;
   b) A breach of norms contained in the Tender Documents; and
   c) A formal defect, including the lack of reasons in fact and in law in the administrative act.

3. The hierarchical appeal must be filed within three business days after notice on the decision on the complaint pursuant to Article 140 of this Regulation.

4. The hierarchical appeal has a staying effect on the contracting proceedings for a maximum period of five business days; the lack of a decision does not imply tacit approval or rejection.

5. The bodies indicated in No. 1 may request a specialized opinion from the Functional Unit of Procurement Supervision.

**ARTICLE 143**
*(Hierarchical Appeal Fee)*

1. As a condition of admissibility of the hierarchical appeal, the tenderer must provide a guarantee, as security, the value of which does not exceed 0.25 per cent of the estimated contracting value, limited to MT125,000.00 (one hundred and twenty-five thousand meticais), which may be adjusted by means of a decision of the Minister who supervises the area of Finances.

2. The amount collected must be restored to the tenderer when the complaint is decided in favor of the tenderer and, if not, reverted to the Contracting Entity.

**ARTICLE 144**
*(Judicial Appeal)*

1. The decision rendered in a hierarchical appeal may be judicially appealed.

2. The judicial appeal must be filed within 10 days of the date of notice of the decision on the hierarchical appeal.

3. The judicial appeal is governed by specific legislation.
CHAPTER V
Ethics and illicit acts

SECTION I
Ethics

ARTICLE 145
(Unethical Practices)

1. The Contracting Entity and the Tenderers must comply with the most elevated ethical standards during the contracting proceedings and the execution of public works, the supply of goods and the rendering of services, in accordance with legislation in force.

2. In the performance of these principles [standards], the following definitions are adopted for purposes of this Regulation:

a) “Corrupt practice” means to offer, give, receive or solicit something of value to influence the act of a civil servant in the contracting proceedings or in contract performance;

b) “Fraudulent practice” means a misrepresentation or omission of facts with the purpose of influencing contracting proceedings or contract performance to the detriment of the Contracting Entity;

c) “Collusive practice” means collusion between tenderers, with or without the knowledge of the Contracting Entity, to establish proposal prices at artificial, non-competitive levels, and to deprive the Contracting Entity of the benefits of free and open competition;

d) “Coercive practice” means a threat or threatening treatment of people or their family members to influence their participation in the contracting proceedings or in the performance of the contract.

3. If one or more of the practices mentioned in the previous number occurs, the Contracting Entity shall reject the proposal and declare the tenderer ineligible pursuant to this Regulation.

SECTION II
Illicit Acts

ARTICLE 146
(Acts Conducted by State Agents)

Independently of any other applicable procedure, agents or civil servants who, participating or taking part in contracting proceedings, breach or fail to comply with the provisions of this Regulation and of the Tender Documents, are subject to disciplinary procedures pursuant the General Statute of State Civil Servants and Agents.
ARTICLE 147
(Acts Conducted by Tenderers)

1. Tenderers who, by themselves or through others, induce or aid in the practice of an act that breaches provisions of this Regulation or the Tender Documents are subject to the administrative procedures referred to in the following numbers.

2. It falls within the competence of the Functional Unit of Procurement Supervision to initiate, conduct and decide on the administrative procedures referred to in the previous number, in terms to be established by a decision of the Minister who supervises the area of Finances.

   a) Fines, as established in the Tender Document;
   b) Prohibition of contracting with the State for the period of a year; and
   c) In case of recidivism, prohibition of contracting with the State for the period of five years.

Tenderers who breach any obligation under the Regulation or the Tender Documents, including socio-environmental sustainability requirements and standards, can be subjected to the administrative procedures above, which may result in the application of the fine provided for in the Tender Documents or in the prohibition of contracting with the State for a year or, in case of recidivism, for five years. These sanctions are tools that may be used by the government to ensure compliance with sustainability norms and to avoid contracting with noncomplying tenderers.

4. The penalties referred to in the previous number must take into account:
   a) The seriousness of the breach with respect to the object of contraction;
   b) The economic and financial situation of the tenderer, especially the capacity to generate revenue;
   c) The degree of the tenderer’s involvement in the completion of the illicit act;
   d) The benefit to the tenderer from the act;
   e) The value of administrative expenses caused by the invalidation of the illicit act; and
   f) Recidivism.

ARTIGO 147
(Actos praticados por concorrentes)

1. São passíveis de procedimento administrativo referido nos números seguintes os concorrentes que, por si ou por intermédio de outrem, induzam ou concorram para a prática de acto que viole o preceituado no presente Regulamento ou nos Documentos de Concurso.

2. Compete a Unidade Funcional de Supervisão das Aquisições instaurar, conduzir e decidir os procedimentos administrativos referidos no número anterior, nos termos a serem estabelecidos por despacho do Ministro que superintende a área das Finanças.

   a) Multa, conforme estabelecido no Documento de Concurso;
   b) Proibição de contratar com o Estado, pelo período de um ano; e
   c) Em caso de reincidência, proibição de contratar com o Estado pelo perío-do de cinco anos.

4. As sanções referidas no número anterior terão em conta:
   a) A gravidade da infração relativamente ao objecto da contratação;
   b) Situação económico-financeira do concorrente, em especial a sua capacidade de geração de receitas;
   c) O grau de envolvimento do concorrente para a consumação do acto ilícito;
   d) O benefício colhido pelo concorrente;
   e) O valor das despesas administrativas causadas pela invalidação do acto ilícito; e
   f) A reincidência.
Further details and contact information

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