

decrees and ministerial orders

PRIME MINISTRY

Decree n° 2008-2471 dated 5 July 2008, amending and completing decree n° 2002-3158 dated 17 December 2002 regulating the public procurements.

The President of the Republic,

On a proposal from the Prime Minister,

Having regard to law n° 75-33 dated 14 May 1975, promulgating the organic law of communes, as amended and completed by subsequent texts and notably organic law n° 2006-48 dated 17 July 2006,

Having regard to law n° 75-35 dated 14 May 1975, relating to the organic law of the local public collectivities budget, all amending and completing texts and notably organic law n° 97-1 dated 22 January 1997 and organic law n° 2007-65 dated 18 December 2007,

Having regard to organic law n° 89-11 dated 4 February 1989, relating to the regional councils, all amending and completing texts and notably organic law n° 2006-2 dated 9 January 2006 approving decree-law n° 2005-1 dated 10 August 2005, relating to the composition of the regional councils,

Having regard to law n° 73-81 dated 31 December 1973, promulgating the public accountancy code, all amending and completing texts, and notably law n° 2006-85 dated 25 December 2006 relating to the finance law 2007,

Having regard to law n° 89-9 dated 1 February 1989, relating to the participations and public enterprises and notably from article 18 to article 22, all amending and completing texts and notably law n° 2006-36 dated 12 June 2006,

Having regard to law n° 91-64 dated 29 July 1991, relating to the competitiveness and prices all amending and completing texts and notably law n° 2005-60 dated 18 July 2005,

Having regard to law n° 2007-69 dated 27 December 2007, relating to the economic initiative,

Having regard to decree n° 69-400 dated 7 November 1969, establishing the Prime Ministry and fixing the Prime Minister attributions,

Having regard to decree n° 2002-3158 dated 17 December 2002, regulating the public procurements, as amended by decree n° 2003-1638 dated 4 August 2003, decree n° 2551-2004 dated 2 November 2004, decree n° 2006-2167 dated 10 August 2006, and decree n° 2007-1329 dated 4 June 2007, and decree n° 2008-561 dated 4 March 2008,

Having regard to the opinion of the Minister of Finance,

Having regard to the opinion of the Administrative Court.

Decreases the following :

Article one- The provisions of articles 50, 53, 79 119 and 120 and the fourth paragraph of article 64 of decree n° 2002-3158 dated 17 December 2002, regulating the public procurements, are repealed and substituted by the following provisions:

Article 50 (new) - The definitive caution or its remainder shall be restituted to the holder of the public procurement, if not the commitment of the joint guarantee who replaces him would be void, unless the holder of the public procurement had performed all his duties at the expiry of the following deadlines:

- four months as from the date of the receipt of the order, according to the provisions of the procurement, when the procurement is not matched with a guarantee deadline,

- four months as from the date of the definitive receipt of the order, or the expiry of the guarantee deadline, when the procurement is matched with a guarantee deadline without retention as indicated in article 51 of the decree herein,

- one month after the provisory or definitive receipt of orders, according to the provisions of the procurement, when the procurement stipulates a retention of the guarantee.

If the public purchaser have informed the holder of the public procurement before the expiry of those deadlines through a justified and registered letter or by any other means having a certain date, that he did not perform his duties, the definitive caution shall not be restituted, if not the commitment of the joint guarantee who replaces him would be opposed. In this case, the definitive caution shall not be restituted to the holder of the public procurement, or the commitment of the joint guarantee who replaces him would not be void, unless by a letter of release delivered by the public purchaser.

Article 53 (new) - The amount of the retention of the guarantee shall be restituted to the holder of the public procurement, unless the commitment of the joint guarantee who replaces him would be void, after the performance of the holder of the public procurement of all his duties at the expiry of the deadline of four months as from the date of the definitive receipt of the order, or the expiry of the guarantee deadline.

If the holder of the public procurement has been informed by the public purchaser before the expiry of those deadlines through a justified and registered letter or by any other means having a certain date, that he did not perform his duties the retention of the guarantee shall not be restituted, if not the commitment of the joint guarantee who replaces him would be opposed.

In this case, the retention of the guarantee shall not be restituted, or the commitment of the joint guarantee who replaces him would not be void, unless by a letter of release delivered by the public purchaser

Article 64 (paragraph 4 new) - Every technical offer which doesn't include the provisory caution or includes information about the prices or the offer's amount shall not be taken into consideration.

Article 79 (new) - The public purchaser at the presentation of the counting report of the technical offers to the competent commission of the procurements, shall precise explicitly in a written report his opinion on the results of competitiveness and on the proposals submitted to him in a counting report of the technical offers, and he may eliminate the offers of the tenderers whose the follow up slips referred to in article 150 of decree herein, includes infringe the professional guarantees necessary to the proper performance of the procurement.

The public purchaser at the presentation of the counting report of the financial offers to the competent commission of the procurements, shall precise explicitly in a written report his opinion on the choice of the holder of the public procurement and the proposed prices.

The public purchaser shall inform the minister in charge of trade about the eliminated financial offers for the extremely low prices infringing the loyal competitiveness. In this case the minister in charge of trade may lodge a complaint before the competition council against the tenderers, in accordance with the provisions of law n° 91-64 dated 29 July 1991 relating to competition and prices.

In case of emergency the Minister in charge of trade may require the taking of provisory measures as referred to in the last sub-paragraph of article 11 of law n° 91-64 dated 29 July 1991 relating to competition and prices.

Article 119 (new) - The holder of the public procurement shall be informed about the reasons of non payment of the partial account or the payment of the balance within the deadline stipulated by the procurement or within the month following the noticing.

Interests in arrears for the benefit of the holder of the public procurement and computed as from the day following the expiry of the deadline to the day of the notification, may result from the delay of this notification.

Article 120 (new) - The payment of the amounts due to the holder of the public procurement, or the issuance of act acting in its place towards the public establishments having non administrative nature, shall be carried out within forty five days as from the date of noticing the partial account or the payment of the balance, or as from the day on which the holder of the public procurement has regularized his files according to the notification addressed to him with regard to article 119 of the decree herein.

This maximum deadline may be sixty days for the projects of civil buildings achieved by the delegated prime contractor.

The public accountant or the agent entitled to pay for the public establishments having non administrative nature shall pay the holder of the public procurement within fifteen days as from the date of the receipt of the paying order. If not the holder of the public procurement benefits from Interests in arrears computed as from the day

following the expiry of this deadline. The Interests in arrears shall be computed on the ground of amounts due to the account title or payment of the balance, at the rates of the money market as published by the central bank of Tunisia .

Art. 2 - Article 42 bis, article 115 bis, second dash newafter the first dash of article 150 are added to decree n° 2002-3158 dated 17 December 2002, regulating the public procurements:

Article 42 (bis) - The holder of a procurement of definite price, may request the updating of his financial offer if the period between the date of presentation of the financial offer and the notification of the procurement or the issuance of the order of the beginning of performance, exceeds six months.

The specifications shall indicate the bases of the updating and its computing methods.

The holder of the procurement shall present to the public purchaser a request in which he indicates the amount of the updating due, the bases and indications determining it This request shall be matched with all documents and proofs.

The public purchaser shall consider this request and establish for the purpose a report to be submitted to the competent commission for procurements. This report shall include the opinion of the public purchaser about the updating request and his proposal for the purpose.

If the competent commission for procurements approves the updating request, the public purchaser shall proceed to the updating of the amount of the offer if the procurement is not concluded, or to the establishment of a project annexed to the procurement concluded, according to the opinion of the commission for procurements, which shall be submitted to the holder of the procurement for signature.

Article 115 (bis) – The holder of the procurement may be compensated for damages and supplementary expenses due to the delay imputed to the public purchaser or to the major modifications made to the project to be performed.

The specifications shall indicate the conditions of compensation with regard to the period of delay, the importance and the nature of the modifications made to the project as well as the computing methods of the compensation.

The holder of the procurement shall present a request for the purpose to the public purchaser, in which he indicates the amount of the compensation, the bases and indications of its evaluation, and shall be matched with all documents and proofs.

The public purchaser shall consider this request and establish for the purpose a report to be submitted to the competent commission for procurements. This report shall include the opinion of the public purchaser about the compensation request and his proposal for the purpose.

If the competent commission for procurements approves the compensation request, the public purchaser shall proceed to the establishment of a project annexed to the procurement, according to the opinion of the commission for procurements, which shall be submitted to the holder of the procurement for signature.

Article 150 (second dash new) - The keeping of an information register about the holders of the public procurements on the base of follow up slips established after the performance of each procurement. The methods relating to the information register and the follow up slips are determined by order of the Prime Minister

Art. 3 - The provision of the decree herein shall be implemented immediately to the current procurements at the time of its publication, except for articles 42 bis and 115 bis. The public purchaser establishes the annexes to the current procurements with regard to the deadline of payment and restitution of caution according to the provisions of the decree herein.

Art. 4 - The Prime Minister, the Minister and secretaries of the state, each in his respective capacity, shall implement the decree herein which shall be published in the Official Gazette of the Republic of Tunisia .

Tunis, 5 July 2008.

Zine El Abidine Ben Ali

Decree n° 2008-2472 dated 5 July 2008, relating to the exceptional review of the prices of the public procurements of works.

The President of the Republic,

On a proposal from the Prime Minister,

Having regard to law n° 75-33 dated 14 May 1975, promulgating the organic law of communes, as amended and completed by subsequent texts and notably by organic law n° 2006-48 dated 17 July 2006,

Having regard to law n° 75-35 dated 14 May 1975, relating to the organic law of the local public collectivities budget, all amending and completing texts and notably organic law n° 97-1 dated 22 January 1997 and organic law n° 2007-65 dated 18 December 2007,

Having regard to organic law n° 89-11 dated 4 February 1989, relating to the regional councils, all amending and completing texts and notably organic law n° 2006-2 dated 9 January 2006 approving decree-law n° 2005-1 dated 10 August 2005, relating to the composition of the regional councils,

Having regard to law n° 73-81 dated 31 December 1973, promulgating the public accountancy code, all amending and completing texts, and notably law n° 2006-85 dated 25 December 2006 relating to the finance law 2007,

Having regard to law n° 89-9 dated 1 February 1989, relating to the participations and public enterprises and notably from article 18 to article 22, all amending and completing texts and notably law n° 2006-36 dated 12 June 2006,

Having regard to law n° 2007-69 dated 27 December 2007, relating to the economic initiative,

Having regard to decree n° 69-400 dated 7 November 1969, establishing the Prime Ministry and fixing the Prime Minister attributions,

Having regard to decree n° 2002-3158 dated 17 December 2002, regulating the public procurements, as amended by decree n° 2003-1638 dated 4 August 2003, decree n° 2551-2004 dated 2 November 2004, decree n°

2006-2167 dated 10 August 2006, and decree n° 2007-1329 dated 4 June 2007, and decree n° 2008-561 dated 4 March 2008,

Having regard to the opinion of the Minister of Finance,

Having regard to the opinion of the Administrative Court.

Decreases the following:

Article one – The holders of the public procurements of works who suffered from loss due to the abnormal increase in the prices of the basic raw materials may get exceptionally the review of the contractual prices of the concerned procurements, according to the conditions and procedures stipulated in the decree herein.

Art. 2 - The exceptional review referred to in the previous article deals with the public procurements with definite or reviewable prices which :

- the deadline of performance is equal or exceeds 6 months,

- the works having been performed totally or partially during a period extending from 1st January 2006 and 31 December 2008 provided that the extending after the 1st January 2006 is not due to a delay caused by the holder of the procurement .

This exceptional review deals with the following basic raw materials: iron, cooper, the by-product of oil: bitumen and conducts.

Art. 3 – The holders of the public procurements shall present a request for the purpose to the concerned public purchaser within a deadline which shall not exceed 31 January 2009.

This request shall precise for each procurement the amount of loss due exclusively to the exceptional increase in the prices of the basic raw materials referred to in article 2 of the decree herein, and shall be matched with all documents and proofs.

Art. 4 - The public purchaser shall examine each request and establish a report to be submitted to a special commission as referred to in article 5 of the decree herein, with 30 days as from the date of the presentation of the request.

This report shall include the opinion of the public purchaser concerning the requests of the holder of the procurement and his proposals .

Art. 5 – A special commission for the consideration of the requests of the exceptional review of the prices of the public procurements is instituted at the Prime Minister.

This commission is chaired by a representative of the Prime Minister, and composed of the following members:

- a representative of the Minister in charge of finance,
- a representative of the Minister in charge of Equipment, Housing and Territorial Development,
- a representative of the Minister in charge of industry,
- a representative of the Minister in charge of commerce,
- a representative of the governor of the central bank of Tunisia,