



الجمهورية الجزائرية الديمقراطية الشعبية
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TRÉSORIER GÉNÉRAL DU ROYAUME

Decree n° 2-22-431 on public procurement

Edition 2023

Decree no. 2-22-431 of 15 chaabane 1444 (8 March 2023) on public procurement

THE HEAD OF GOVERNMENT,

Having regard to the Constitution, in particular its articles 72, 90 and 92 ;

Having regard to organic law no. 130-13 on the Finance Law, promulgated by dahir no. 1-15-62 of 14 Chaabane 1436 (2 June 2015), in particular its article 68;

Having regard to organic law no. 111-14 on regions, promulgated by dahir no. 1-15-83 of 20 Ramadan 1436 (7 July 2015), in particular its article 123;

Having regard to organic law no. 112-14 on prefectures and provinces, promulgated by Dahir no. 1-15-84 of 20 Ramadan 1436 (7 July 2015), in particular its article 201;

Having regard to organic law no. 113-14 on municipalities, promulgated by dahir no. 1-15-85 of 20 ramadan 1436 (7 July 2015), in particular its article 210;

Having regard to law no. 69-00 on State financial control over public enterprises and other bodies, promulgated by dahir no. 1-03-195 of 16 ramadan 1424 (11 November 2003), as amended and supplemented;

Following the opinion of the National Commission for Public Procurement;

After deliberation by the Government Council, meeting on 5 Jumada II 1444 (29 December 2022),

DECREES:

Chapter one
General provisions

FIRST ARTICLE. – General principles

Public procurement is governed by the following principles:

- Freedom of access to public contracts;
- Equal treatment of competitors;
- The guarantee of competitors' rights;
- Transparency in the choices made by the project owner.

Public procurement also obeys the principles of integrity and good governance.

When awarding public contracts, the project owner takes into account, as appropriate, the economic, social, environmental and ecological dimensions, the goals of sustainable development, energy efficiency, the preservation of water resources, the enhancement of the architectural landscape, the safeguarding of the national heritage and historical monuments and the requirements linked to the promotion of innovation and research and development.

The principles and requirements set out in this article contribute to ensuring the effectiveness of public procurement and the proper use of public funds. They require a prior definition of needs, compliance with advertising and competitive tendering obligations and the choice of the most economically advantageous tender.

These principles and requirements are implemented in accordance with the rules set out in this decree.

ART. 2. – Purpose and scope

This decree lays down the conditions and forms under which contracts for works, supplies and services are awarded on behalf of the following organizations:

- a) The State ;
- b) Regions, prefectures or provinces, municipalities, groups of local and regional authorities, inter-municipal cooperation establishments or any other legal body governed by public law under local authorities, referred to in the remainder of this decree as « local and regional authorities » ;
- c) Public institutions and other legal entities governed by public law required by the laws and regulations in force to apply the regulations on public contracts.

This decree also lays down certain rules on the management and control of the public contracts referred to above.

ART. 3. – Exclusions

The following are excluded from the scope of this decree :

- Agreements or contracts concluded in the forms and according to the rules of ordinary law as defined by paragraph 7 of article 4 of this decree ;
- Contracts for the delegated management of public services and public-private partnership contracts;
- Property transfer operations between State services, between the State and local authorities or between the State and public institutions;
- Services provided between State services as governed by the laws and regulations in force;
- Contracts covering financial transactions carried out on the international financial market and related services;
- Agreements for project management assistance concluded between local authorities and local or national public bodies or international organisations;
- Services provided on behalf of local authorities by legal entities governed by public law belonging to them, regional development companies, development companies or local development companies, under agreements for which the conditions and forms are set by order from the Minister of the Interior ;
- Services provided abroad on behalf of services located abroad, which are the responsibility of both the State and public institutions.

The provisions of this decree may be waived for contracts awarded under agreements or conventions that Morocco has concluded with international organisations or foreign States, where these agreements or conventions expressly stipulate the application of specific conditions and forms for awarding contracts.

ART. 4. –Definitions

For the purposes of this Decree, the following definitions shall apply:

- 1 –Successful tenderer: the competitor whose tender was selected before the approval of the contract was notified to him;
- 2 –Competent authority: the authorising officer or the person delegated by him to approve the contract or any other person empowered to do so by a legislative or regulatory text;
- 3 –Price schedule: the document which contains a breakdown by item of the services to be performed and indicates, for each of these items, the price applicable to it;

4 –Supply price schedule: the document indicating the list of materials to be supplied to the construction site and the corresponding unit prices;

5 –Global price schedule: the document which, for a global price contract, indicates the service to be provided and the corresponding fixed price;

6 –Competitor: any natural or legal person taking part in an invitation to tender at a stage prior to the submission of tenders or in a negotiated procedure prior to the award of the contract, or who proposes a tender with a view to concluding a contract;

7 –Agreements or contracts under ordinary law: agreements or contracts whose purpose is to provide services that have already been defined as to the conditions of their enforcement and their price and which the project owner cannot or has no interest in modifying them ;

The list of services that may be the subject of agreements or contracts under ordinary law is set out in Annex 1 to this decree. This list may be amended or supplemented by an order of the Minister of Finance adopted on a proposal from the government authority concerned and after obtaining the opinion of the National Commission for Public Procurement.

At the beginning of each financial year, the project owner is required to publish on the public procurement portal a list showing, by type of service, the number and total amount of agreements or contracts under ordinary law concluded in respect of the previous financial year. The model of this list is set by an order of the Minister of Finance;

8 –Breakdown of the global amount: the document which, for a global price contract, contains a breakdown of the services to be performed by item, based on the nature of these services. This document may indicate the lump-sum quantities for the various items;

9 – Itemised estimate: the document which, for a unit price contract, contains a breakdown of the services to be performed by item and indicates, for each item, the presumed quantity and the corresponding unit price shown on the price schedule. The itemised estimate and the price schedule may form a single document known as the « price schedule - itemised estimate »;

10 –Group: two or more competitors who subscribe to a unique commitment , under the conditions set out in Article 150 of this Decree;

11 –Young innovative company: any company set up in accordance with current legislation and with strong potential for innovation and growth, especially in the field of new technologies and digital technology;

12 –Project owner: the competent authority or any person designated by it pursuant to a decision to ensure the preparation, award and performance of public contracts in the name and on behalf of one of the bodies provided for in article 2 of this decree.

The competent authority may appoint one or, if necessary, several project owners for the public contracts of the organisation concerned.

The competent authority shall designate the project owner ex officio.

A copy of the decision to designate the project owner is included in the file for each contract awarded by one of the above-mentioned organisations;

13 –Delegated project owner : any public institution, public administration, state-owned company or one of its subsidiaries, public subsidiary, regional development company,

development company or local development company to which all or some of the tasks assigned to the project owner are entrusted;

14 –Contract: a contract for pecuniary interest concluded between a project owner and a natural or legal person called a contractor, supplier or service provider for the purpose of carrying out works, delivering supplies or providing services as defined below:

a) Works contract: a contract for the execution of works relating, in particular, to the construction, reconstruction, demolition, repair, renovation, development and/or maintenance of a building, work or structure, as well as the reforestation and development of green spaces. The works contract also includes any contract concerning the restoration of traditional, historical and ancient works as defined by legislation on the conservation of historic monuments, sites, inscriptions, works of art and antiques. The works contract may include, where appropriate, services ancillary to the works, such as studies and services provided within the same contract and the installation of technical, electrical, electronic, audiovisual and/or air-conditioning equipment.

b) Supply contract: contract for the purchase or hire of products or equipment with a purchase option.

This may include, where applicable, on an ancillary basis, laying and installation work necessary to carry out the service.

Supply contracts include in particular :

- Routine supply contracts for the purchase of commercially available products which are not manufactured to the particular technical specifications required by the project owner;
- Non-routine supply contracts, the main purpose of which is to purchase products that are not commercially available and that the holder must carry out based on the project owner's particular technical specifications. These contracts may, where applicable, include, on an ancillary basis, design services;
- Rental contracts with a purchase option which have as their object the rental of capital goods other than immovable property, equipment or tools which give the lessee the possibility of acquiring, on a previously fixed date, all or part of the leased goods, for an agreed price taking into account, at least in part, the payments made as rent.

c) Service contract: contract for the provision of services that cannot be classified as either works or supplies.

Service contracts include in particular:

- Contracts for study, project management and research services which may, where applicable, include specific obligations linked to the concept of intellectual property;
- Current service contracts, the purpose of which is to provide services that can be supplied without any particular technical specifications required by the project owner;
- Contracts for the hire, without option to purchase, of movable property, in particular equipment, hardware, software, furniture, vehicles and devices;
- Contracts for the upkeep and maintenance of equipment, facilities and materials, cleaning and guarding of administrative premises and upkeep of green spaces;
- Contracts for assistance to the project owner
- Contracts for training services;
- Contracts for building and public works laboratory services relating to testing, quality control of materials and geotechnical testing;
- Contracts for seismic or geotechnical studies;

–; Contracts for topographical surveys, photography and filming;

–Contracts for architectural services.

15 –Workload plan: the statement, drawn up by the competitor, listing the public contracts for which he is in charge to perform, as holder or subcontractor, on the date of submission of his tender to the project owner;

16 – Services: works, supplies or services;

17 –Service provider: the contractor, the supplier or the service provider;

18 –Innovative services: services whose purpose is research and development, concerning new processes or the improvement of already existing processes for works, services or supplies;

19 –Special register: the register held by the project owner in which the references of all the documents he has issued or received during the contract award phase are recorded;

20 –Detailed breakdown of prices : the document showing, for each of the prices in the schedule or only for those of them which are provided for in the special specifications, the quantities and amounts of materials and supplies, labour, equipment operating costs, overheads, taxes and margins. Unless otherwise stipulated in the special specifications book , this document has no contractual value;

21 –Holder : the successful tenderer to whom approval of the contract has been notified.

ART. 5. –Determination of needs

When defining the services to be provided under the contract, the project owner must limit himself to responding to the nature and extent of the needs to be met.

Similarly, he is obliged, prior to any call for competition or negotiation, to determine as accurately as possible the needs to be met and the technical specifications and the consistency of the services to be provided and, where the award of the contract so requires, to ensure that the authorisations and formalities required under the laws and regulations in force have been obtained.

In the case of works contracts, and unless authorised by the Head of Government, the project owner is required to ensure , where applicable, that the land on which the project is to be carried out has been cleaned up before the award procedure is launched.

As regards the restoration of traditional, historic and ancient works referred to in article 4 above, the project owner is obliged to seek project management assistance.

For services with a craft component, the project owner's needs are defined on the basis of Moroccan craft products.

The definition of needs must be made on the basis of products of Moroccan origin or by reference to approved Moroccan standards.

Failing this, the needs are defined on the basis of products of foreign origin that meet the standards applicable in Morocco or, in the absence of such standards, international standards.

In the two cases referred to in the above paragraph, the project owner shall draw up an administrative certificate justifying the use of products of foreign origin.

The technical specifications of the services covered by the contract must be determined based on criteria relating in particular to the required performance, capacity and quality.

Subject to the components required for the maintenance of equipment already acquired and inventoried, the technical specifications should not contain a trade mark, or refer to a catalogue, a name, a patent, a design, a type, a specific origin or provenance, a particular producer or a certification standard, unless there is no other means of describing the characteristics of the services to be performed in a sufficiently precise and intelligible manner and provided that the name used is followed by the words «or its equivalent».

Where a trade mark or reference is mentioned, it includes services with equivalent characteristics and at least the same performance and quality as those required.

The definition of technical specifications must in no case prevent or limit competition.

If a competitor proposes a trade mark that meets the technical specifications required by the project owner, this trade mark must be mentioned in the contract if he is declared the successful tenderer.

ART. 6. –Establishing the estimated cost of the services

Prior to any call for competition or negotiation, the project owner will draw up an estimate of the cost of the services to be provided, based on the characteristics and consistency of the services, prevailing market prices and considerations and constraints relating, in particular, to the conditions and timeframe.

The estimated cost of services may also be established on the basis of price benchmarks, where these exist.

The estimate drawn up in accordance with the provisions of this article includes the various prices contained, as the case may be, in the price schedule - itemised estimate, the price schedule, the itemised estimate and the global price schedule. The total amount of the estimate includes all taxes.

When the contract is divided into lots, the project owner draws up an estimate for each lot.

The estimate of the cost of services is recorded in writing, signed by the project owner and kept in the contract file.

Chapter II Types and prices of contracts

Section one. –Types of contracts

ART. 7. –Framework contracts

1 –Notwithstanding the provisions of Article 5 above, so-called « framework contracts » may be awarded when the quantification and rate of performance of a service of a predictable, repetitive and permanent nature cannot be determined entirely in advance.

Framework contracts cover only the minimum and maximum value or quantity of services likely to be ordered during a given period not exceeding the year in which they are awarded. These minimum and maximum values and quantities must be set by the project owner prior to any call for competition or negotiation.

The maximum value of the services cannot be greater than twice the minimum.

2 –Framework contracts determine, in particular, the specifications and the price of the services or the methods for determining this price.

The list of services that may be the subject of framework contracts is set out in Annex 2 to this decree. This list may, where applicable, be amended or supplemented by an order of the Minister of Finance adopted on a proposal from the government authority concerned and after obtaining the opinion of the National Commission for Public Procurement.

3 –Framework contracts are concluded for a fixed term not exceeding the current year.

The special specifications book relating to framework contracts include a tacit renewal clause.

In this case, the framework contracts are tacitly renewed from one year to the next, within the limit of a total duration of three consecutive years for the services provided for in A) of Annex no. 2 of this decree and five consecutive years for the services provided for in B) of the same annex.

The duration of the framework contract runs from the start date of the execution of the services fixed by service order.

The non-renewal of the framework contract shall be initiated by one of the two parties to the contract, subject to prior notice drawn up in accordance with the terms and conditions set out in the special specifications book relating to the framework contract. In the event of non-renewal, the framework contract is terminated.

4 –During the term of the framework contract, the quantities of the services to be performed and their execution time are specified for each order by the project owner based on the needs to be met.

If the framework contract so provides, either contracting party may request a review of the terms and conditions of performance of the contract.

In this case, the special specifications book relating to the framework contract will set out the conditions that may be subject to this revision. The revision is introduced by means of an amendment. If no agreement is reached on this revision, the contract must be terminated.

5 –Notwithstanding the provisions of sub-paragraph 3 of the first paragraph of this article, the quantity or value of the services to be performed may be readjusted, as the case may be, up to a limit of :

- Ten percent (10%) of the maximum, in the event of an increase ;
- Twenty-five per cent (25%) of the minimum, in case of a decrease.

The rates of ten per cent (10%) and twenty-five per cent (25%) referred to above are assessed in connection with the total duration of the framework contract by means of a single readjustment or several partial readjustments. Any readjustment is introduced by amendment.

6 –The accounting commitment for the framework contract shall each year cover the maximum amount. However, for the first year, this commitment may, where appropriate, relate to the amount corresponding to the needs to be met or to the proportion of the period considered, within the limit of the payment appropriations available for the current budget year.

For the last year, the accounting commitment must relate to the amount corresponding to the needs to be met or to the proportion of the period remaining to achieve the total duration of the framework contract, provided, however, that the cumulative amount of the commitments under the framework contract may not exceed three times the maximum amount, readjusted if necessary, for the services provided for in A) of Annex No. 2 to this Decree and five times the maximum amount, readjusted if necessary, for the services provided for in B) of the same Annex.

When the accounting commitment for the amount of the framework contract has not been made for a given year, the contract must be terminated.

7 –At the end of each budget year, the project owner draws up a partial final statement for the amount of the services provided during the period in question and a final and general statement at the end of the last period of the framework contract, for the amount of the services provided during the entire term of the framework contract.

ART. 8. –Renewable contracts

1 –«Renewable contracts» may be awarded when the quantities of services that are predictable, repetitive and permanent can be determined as accurately as possible in advance by the project owner.

2 –Renewable contracts must determine, in particular, the specifications, consistency, implementation modalities and price of the services likely to be provided over a period not exceeding the year in which they are awarded.

The list of services that may be the subject of renewable contracts is set out in Annex 3 to this decree. This list may be amended or supplemented by an order of the Minister of Finance adopted on a proposal from the government authority concerned and after obtaining the opinion of the National Commission for Public Procurement.

3 –Renewable contracts are concluded for a specific period not exceeding the current year.

The special specifications book relating to renewable contracts include a tacit renewal clause. In this case, the renewable contracts are tacitly renewed from one year to the next, within the limit of a total duration of three consecutive years for the services provided for in A) of Annex no. 3 of this decree and five consecutive years for the services provided for in B) of the same annex.

The duration of the renewable contract runs from the start date of the execution of the services fixed by service order.

The non-renewal of the renewable contract shall be initiated by one of the two parties to the contract, subject to prior notice drawn up in accordance with the terms and conditions set out

in the special specifications book relating to the renewable contract. In the event of non-renewal, the renewable contract is terminated.

4 –During the term of the renewable contract, the quantities of the services to be performed and their execution time are specified for each order by the project owner based on the needs to be met.

If the renewable contract so provides, either contracting party may request a review of the conditions of performance of the contract.

In this case, the special specifications book relating to the renewable contract will set out the conditions that may be subject to this revision. The revision is introduced by means of an amendment. If no agreement is reached on this revision, the contract must be terminated.

The services to be provided under the renewable contract may be modified. These modifications are made under the conditions set out in the general administrative clauses book applicable to the service covered by the renewable contract.

5 –The accounting commitment for the renewable contract shall cover each year the total amount of the contract . However, for the first year, this commitment may, where appropriate, relate to the amount corresponding to the needs to be met or to the proportion of the period considered, within the limit of the payment appropriations available for the current budget year.

For the last year, the accounting commitment corresponds to the period remaining to achieve the total duration of the renewable contract.

When the accounting commitment for the amount of the renewable contract has not been made for a given year, the contract must be terminated.

6 –At the end of each budget year, the project owner draws up a partial final statement for the amount of the services provided during the period in question and a final and general statement at the end of the last period of the renewable contract, for the amount of the services provided during the entire term of the renewable contract.

ART. 9. –Conditional stage-payment contracts

Conditional stage-payment contracts are contracts for which provision is made for a firm instalment covered by available appropriations which the holder is certain to carry out, and one or more conditional instalments, the performance of which is subject to the availability of appropriations and to the notification of one or more service orders prescribing the performance of the instalment or instalments in question within the time limits laid down in the contract.

Both the firm instalment and the conditional instalments each constitute a coherent, autonomous and functional range of services.

Conditional stage-payment contracts cover the entire service and define the consistency, price and implementation modalities of each instalment.

If the service order relating to one or more conditional instalments cannot be given within the prescribed time limits, the holder contractor may, at his request :

- Receive a waiting allowance if the contract so provides and under the conditions defined therein;
- Waive performance of the conditional instalment(s) concerned.

If the project owner decides to give up performing out one or more conditional instalments, he will notify this decision to the holder by means of a service order.

In this case, a compensation known as "reverse termination fee" is granted to the holder, if the contract so provides and under the conditions defined therein.

ART. 10. –Allotment contracts

1 –Works, supplies or services may be the subject of a single contract or an allotment contract.

The project owner chooses between these two methods for carrying out the services on the basis of the financial or technical advantages they offer or when the allotment is likely to encourage the participation of very small, small and medium-sized enterprises, cooperatives, cooperative unions and self-employed entrepreneurs.

The project owner may, if necessary, limit the number of lots that can be awarded to the same competitor for reasons linked to:

- Security of supply ;
- The capacity of the service provider to perform the contract, taking into account its workload ;
- The time required for performance ;
- The place of performance or delivery.

If several lots are awarded to the same competitor, a single contract covering all of these lots may be awarded to this competitor.

The consultation regulations provided for in article 21 of this decree must contain all relevant details in this respect.

2 –To award the lots, the project owner proceeds as follows:

- Either opens and examines the bids for each lot and awards the lots, lot by lot, in the order in which they are listed in the tender documents;
- Or opens and examines all the bids and awards the lots on the basis of the best combination of bids, enabling the project owner to select the most advantageous overall bid for all the lots.

To this end, the consultation regulations specify the method used to award the lots.

Competitors' offers of price discounts based on the number of lots they are likely to be awarded will be taken into consideration.

3 –For the purposes of this article, "lot" means :

- With regard to supplies: an article, a set of articles, objects or goods of the same kind and of a homogeneous, similar or complementary nature;
- With regard to works: part of the work to be carried out or a body of work or a group of works belonging to a more or less homogeneous set and presenting similar or complementary technical specifications;

–With regard to services: part of the service to be provided or a group of services belonging to a more or less homogeneous set and presenting similar or complementary technical specifications.

ART. 11. –Design-build contract

A design-build contract is a single works contract concluded with a service provider or a group of service providers whose purpose is to:

- Either design the project and perform the works ;
- Design, perform and deliver a complete installation.

The project owner may use a design-build contract when it appears that :

- The implementation of the project requires, from the outset, an association between the designer and the service provider ;
- The subject of the contract is a specific type of infrastructure project or special services requiring special innovative procedures and closely integrated manufacturing processes.

The design-build contract contains a commitment to improve energy efficiency.

The design-build contract is awarded by way of a competition in accordance with the provisions of section II of chapter IV of this decree.

The project owner uses his own resources or those of the project management assistance to plan and coordinate the work of the designer and the service provider, to check that the contractual commitments entered into by the service provider are met and to monitor the proper implementation of the services covered by the contract.

The procedures for coordination and control provided for in the previous paragraph are set out in the design-build contract.

The use of the design-build contract is subject to:

- Obtaining prior permission from the Head of Government, after obtaining the opinion of the National Commission for Public Procurement, for contracts awarded by the State, public institutions and other legal entities governed by public law as referred to in article 2 of this decree ;
- Obtaining prior permission from the Minister of the Interior, after obtaining the opinion of the National Commission for Public Procurement, for contracts awarded by local authorities.

At the end of the design-build contract, the project owner concerned draws up an evaluation report covering, in particular, compliance with the authorisation granted, assessment of the results obtained and, where applicable, identification of any constraints encountered.

This report is forwarded to the Head of Government by the Minister concerned or to the Minister of the Interior by the authorising officer of the local authority concerned.

ART. 12. – Competitive dialogue

I) Competitive dialogue is the procedure whereby the project owner engages in dialogue with the candidates admitted to take part in it, with a view to identifying or developing solutions that meet his needs.

It covers complex or innovative projects for which the project owner is not in a position to define, by his own means, the technical conditions for their implementation and the related legal and financial arrangements.

II) The competitive dialogue procedure is organised in three successive stages as follows:

A. Call for competition:

During this stage, the project owner :

- Publishes a notice of the call for competition for the competitive dialogue in accordance with the conditions set out in Article 50 of this Decree. However, the period between the date of publication of the notice and the deadline for receipt of applications may not be less than fifteen days;
- Draws up the consultation regulations for the competitive dialogue in accordance with the provisions of article 21 of this decree;
- Establishes a functional programme defining the nature and extent of the needs to be met and the objectives to be achieved. This programme is made available to the competitors.

The application files, drawn up in accordance with the provisions of 1 of A and B of II) of Article 53 of this decree, are submitted or handed in by the competitors under the conditions set out in Article 54 of this decree.

Candidates are admitted to take part in the competitive dialogue under the conditions and in accordance with the procedures set out in articles 56 and 57 of this decree, by a commission set up in accordance with article 55 of the same decree.

The project owner will inform candidates who have not been accepted by registered letter with acknowledgement of receipt.

Subject to the provisions of the last subparagraph of paragraph A of this article, the project owner informs the admitted candidates in the same way and invites them to take part in the competitive dialogue within a time limit that he sets.

The detailed functional programme and the draft special specifications book will be given to the admitted candidates by the project owner.

The number of candidates admitted to take part in the competitive dialogue may not be less than two.

Failing this, the project owner ends the procedure and informs the admitted candidate, if any.

B. Conduct of the competitive dialogue :

1 –During this stage, the project owner initiates the competitive dialogue with each of the candidates admitted to submit a tender.

The competitive dialogue takes place in successive phases, with the submission of bids containing the solutions proposed by the candidates in each phase.

Throughout all phases of the competitive dialogue, the project owner is assisted by at least two representatives of his administration, one of whom comes from the department concerned by the service that is the subject of the competitive dialogue.

The project owner can discuss all aspects of the project with the admitted candidates, including in particular the legal, technical and financial aspects.

Each candidate is heard in strict compliance with the principle of equal treatment of competitors provided for in Article one of this Decree.

The project owner may not provide candidates with information that could give them a competitive advantage over other candidates. Nor may he reveals to other candidates the solutions proposed or the confidential information communicated by a candidate as part of the competitive dialogue, without the candidate's formal agreement.

The project owner continues the dialogue with the candidates in the running until he is able to identify the solution(s) likely to meet the needs defined in the functional programme.

At the end of the discussions held with each candidate, a report is drawn up and signed jointly by the project owner and the candidate.

The project owner may request clarifications or details concerning the solutions proposed by the candidates, without these clarifications or details having the effect of modifying the basic features of the tender or the essential characteristics of the special specifications book.

At the end of the competitive dialogue phases, only the solutions which best match the criteria set by the project owner in the functional programme will be selected.

In this case, minutes are drawn up, listing the candidates selected and those excluded. An extract from these minutes is given to the commission responsible for opening and examining tenders.

2 –When the competitive dialogue comes to an end, the project owner informs the candidates who have participated in all the phases of the competitive dialogue by registered letter with acknowledgement of receipt.

The project owner sets out the final clauses of the special specifications book, which he gives to the admitted candidates and invites them, on the same day and in the same way, to submit their tenders, within a set time limit, which may not be less than thirty days from the date on which the invitation letter is sent, and informs them of the place where the tenders are to be submitted and the date on which they are to be opened and examined.

These tenders must include, in addition to the initialled and signed special specifications book, the candidate's financial offer.

3 –The project owner draws up a comprehensive and detailed report on the progress and content of the discussions he had with the candidates and the choices he made.

This report is signed by the project owner and the representatives of the administration referred to in 1 of B of this article. It is kept in the contract file.

C. Results of the competitive dialogue :

During this stage, the commission referred to in A of II) of this article opens and examines the tenders submitted by the candidates in accordance with the provisions of article 42 and articles 45 to 48 of this decree.

This commission then evaluates and ranks the financial bids submitted by the candidates and proposes to the project owner that the lowest bid be selected.

The consultation regulations for the competitive dialogue may provide for the granting of bonuses to the candidates whose bids are ranked highest, up to a limit of three candidates.

The amount of the bonus granted to the holder is deducted from the sums due to him under the contract.

ART. 13. – Spontaneous bid

1 – Any contractor, supplier or service provider may, on his own initiative, propose to the project owner any project, idea or operation presenting new functionalities, new services or technical innovations and meeting a potential need that the project owner has not previously identified.

A bid that has been the subject of a call to tender cannot be qualified as an spontaneous bid. A spontaneous bid cannot relate to a project for which the studies have been carried out by the project owner, except in the case where it turns out that these studies have become obsolete.

2 –The project owner makes a preliminary assessment of the proposal made by the spontaneous bidder.

If the project owner decides to follow up on the spontaneous bid, he will first draw up a functional programme of needs, before launching a call to tender to carry out the project, idea or operation that is the subject of the spontaneous bid.

3 –The project owner may not use the negotiated procedure to contract with the spontaneous bidder, except where the spontaneous bid is based on a specific technology that only the spontaneous bidder possesses or master, and where there is no other alternative for satisfying the project owner's needs.

4 –After drawing up the functional programme of needs referred to above, the project owner launches a call for competition.

To this end, he prepares a tender dossier on the basis of the proposals submitted by the spontaneous bidder, who must specify, in writing, to the project owner the confidential data that may not, under any circumstances, be disclosed.

The spontaneous bidder may, as well as other competitors, take part in the tendering procedure launched in accordance with the provisions of this decree.

When he participates, he benefits from a margin of preference in the form of a bonus of between five percent (5%) and ten percent (10%) of the overall score of the bid.

The procedures for applying the margin of preference to be granted to the spontaneous bidder taking part in the tendering procedure are set out in the consultation regulations.

5 –The assessment of competitors' bids is based in particular on the following aspects :

- The overall coherence of the project and its compatibility with the mission assigned to the project owner;
- The quality and relevance of the technical solutions proposed;
- The cost-benefit analysis of the project;
- Competitiveness and job creation potential;

- Technology transfer arrangements;
- The quality of the proposed contractual and financial arrangements.

Competitors' bids are evaluated and judged in accordance with the terms and conditions set out in article 144 of this decree.

6 –The consultation regulations provide for a bonus to be awarded to the spontaneous bidder in one of the following cases:

- if the spontaneous bid is accepted and the tenderer does not take part in the call for competition;
- If the spontaneous bidder participates in the call for competition, but he is not awarded the contract;
- If it is declared the successful tenderer.

In this case, the amount of the bonus granted is deducted from the sums due to him in his capacity as holder under the contract.

Section II. –Contract prices

ART. 14. –Nature and methods of defining prices

Contract may be based on global prices, unit prices, mixed prices or percentage prices.

1 –Global price contract :

A global price contract is one in which a flat price covers all the services that are the subject of the contract. This flat price is calculated on the basis of the breakdown of the global amount, each of the items in the breakdown is assigned a flat price. The global amount is calculated by summing up the various flat prices indicated for all these items.

Where items are assigned quantities, these are flat-rate quantities established by the project owner. A flat-rate quantity is the quantity for which the holder has submitted a flat price.

2 –Unit price contract :

A unit price contract is one in which the services are broken down, on the basis of an itemised estimate drawn up by the project owner, into different items with an indication of the proposed unit price for each item.

The sums due under the contract are calculated by applying the unit prices to the quantities actually executed in accordance with the contract.

3 –Mixed price contract:

The contract is said to be a mixed price contract when it includes services paid for partly on the basis of a global price and partly on the basis of unit prices. In this case, payment of the sums due is made as provided for in the first and second paragraphs of this article.

4 – Percentage price contract:

The contract is said to be a percentage price contract when the price of the service is fixed by a rate to be applied to the amount, excluding taxes, of the work actually carried out and duly recorded, without including the amount resulting from price revisions, indemnities and penalties, if any.

This form of pricing is only applicable to architectural services in accordance with the provisions of Chapter V of this decree.

ART. 15. –Nature of prices

The contract price includes the profit and all duties, taxes, overheads, incidental expenses and, in general, all expenses incurred by the service covered by the contract until its completion.

The project owner may, however, include a clause in the special specifications stipulating that he will cover the costs of customs clearance and/or transportation.

Contract prices may be firm, revisable or provisional.

1 –Firm price contract :

The contract price is firm when it cannot be changed during the contract performance period.

If the value added tax rate is changed after the deadline for submission of tenders, the project owner will reflect this change in the settlement price.

In the case of contracts relating to the purchase of products or services whose prices are regulated, the project owner reflect the difference resulting from the change in the price of these products or services, occurring between the closing date for submission of tenders and the date of delivery, in the settlement price stipulated in the contract.

Contracts for supplies and services other than studies are firm price contracts.

However, for supply contracts and service contracts other than studies which do not include regulated prices and whose execution period is longer than six months, the project owner reflects the difference resulting from the fluctuation in the price of the services covered by the said contracts, occurring between the closing date for submission of tenders and the date of delivery, in the settlement price provided for in the contract, in accordance with the conditions and procedures laid down by order of the Head of Government adopted on a proposal from the Minister of Finance.

Study contracts with a completion date of less than three months are awarded on a firm price basis.

2 –Revisable price contract :

The contract price is revisable when it can be modified as a consequence of economic variations occurring during the performance of the services or when their performance requires the use of a large proportion of raw materials whose prices are directly affected by fluctuations in world prices.

Works contracts are awarded on a revisable price basis.

Study contracts with a completion date of three months or more are awarded on a revisable price basis.

The rules and conditions for price revision are set by order of the Head of Government, issued after approval by the Minister of Finance.

The specifications book expressly state the terms and conditions of price revision and the due date .

3 –Provisional price contract :

A contract is awarded on a provisional basis when performance of the service must be started, while all the conditions required to determine a final initial price have not yet been met due to the urgent nature of the service.

Provisional price contracts may only be awarded in the case provided for in paragraph 7 of II) of Article 89 of this decree.

Chapter III

Forms and procedures for awarding contracts

ART. 16. – Form and content of contracts

A. Contracts are written contracts, the specifications book of which specify the methods of awarding and the conditions of performance. The specifications book include the general administrative clauses book (GAC), the common specifications book (CS) and the special specifications (SS).

1 - The general administrative clauses book lay down the administrative provisions applicable to all works, supply or service contracts awarded by the bodies provided for in article 2 of this decree or to a particular category of such contracts. These specifications book are approved by decree.

If a contract includes several categories of services, the general administrative clauses book applicable is that corresponding to the dominant category of these services.

If there are no general administrative clauses book specific to the services covered by the contract, the contract shall be governed by one of the most appropriate general administrative clauses in force, after the project owner has, where appropriate, introduces the necessary adjustments in the special requirements book .

2 - The common prescriptions book essentially set out the technical provisions applicable to all contracts for the same type of works, supplies or services or to all contracts awarded by the same ministerial department, same specialised service, local authority, public institution or other legal entity governed by public law.

However, the common prescriptions books may :

- Include, in compliance with the provisions of the general administrative clauses book , any common prescriptions other than technical , to all contracts in the category to which they apply or to the ministerial department, specialised service, local authority, public institution or any other legal entity governed by public law concerned ;
- Determine, in particular, the common financial clauses concerning the nature of the services, notably those relating to the definition of price and the price revision formulas, in accordance with the regulations in force.

Where the common financial clauses books include clauses with a financial impact, they are approved by order of the minister concerned and endorsed by the minister in charge of finance.

The common prescriptions books specific to a ministerial department, public institution or any other legal entity governed by public law may be extended to other ministerial departments, public institutions or other legal entities governed by public law by order of the minister concerned or by decision of the deliberative body of the public institution or legal entity governed by public law concerned, as the case may be.

The common prescriptions books applicable to local authorities are drawn up and approved by order of the Minister of the Interior.

However, the common prescriptions books specific to a ministerial department, a public institution or a legal entity governed by public law may be extended, where applicable, to local authorities, by order of the Minister of the Interior.

3 –The special prescriptions book lay down the clauses specific to the contract and includes a reference to the applicable general texts and an indication to the articles of common prescriptions book and, where applicable, to those of the general administrative clauses book from which they derogate, without however repeating the clauses of the general administrative clauses book or those of the common prescription book from which they do not derogate.

The special prescription book is signed by the project owner before the contract award procedure is launched. This signature takes the form of a scanned or electronic signature for the special conditions published on the public procurement portal.

B. The special prescription books must contain at least the following information and stipulations:

- a) The method of awarding ;
- b) the express reference to the provisions of this Decree under which the contract is awarded;
- c) Indication of the contracting parties, the names and titles of the signatories acting on behalf of the body concerned and the co-contractor ;
- d) The purpose and consistency of the services to be provided, with an indication of the place where they are to be performed;
- e) A list in order of priority of the documents included in the contract;
- f) the price, subject to the provisions relating to provisional price contracts;
- g) the period for performance or the date for completion of the contract;
- h) the use of local labour for works and service contracts other than studies;
- i) the use of craftsmen for contracts with a craft component;
- j) the use, in accordance with the conditions laid down in Articles 144 and 145 of this Decree, of experts resident in Morocco, both for contracts relating to studies and for contracts relating to information systems;
- k) the conditions for acceptance and, where applicable, delivery of the services;
- l) the conditions for granting and refunding advances in accordance with the regulations in force;
- m) terms of payment in accordance with the regulations in force;
- n) pledge clauses;
- o) conditions for termination;
- p) Approval of the contract by the competent authority ;
- q) the holder's commitment to provide the project owner with documents justifying the actual payment of the salaries and social security contributions of his employees, as and when the services covered by the contract are carried out, in the event that the contract covers security, maintenance, cleaning of administrative buildings or maintenance of green areas;

r) the clause by virtue of which the contract holder is required to submit to the project owner the documents justifying the payment, by him, of the sums due to the subcontractor as and when the subcontracted services are carried out, in the event that the contract holder resorts to subcontracting.

The special prescription books must also include the other compulsory information provided for in the general administrative clauses books.

Standard special specifications may be drawn up in accordance with models established by order of the Minister of Finance for contracts awarded by the State, public institutions and other legal entities governed by public law, and by order of the Minister of the Interior for contracts awarded by local authorities.

C. Contracts are concluded on the basis of the act of commitment signed by the successful tenderer and on the basis of the special prescriptions books.

ART. 17. –Publication of the three-year forecast programme

At the beginning of each financial year and before the end of the first quarter at the latest, the project owner publishes in a nationally circulated newspaper and on the public procurement portal, the three-year forecast programme for the contracts he plans to award for the year in question and the following two years.

This forecast programme will be posted by the project owner on the premises of the organisation to which he belongs for a period of at least thirty days.

The project owner may, if necessary, make changes to the three-year forecast programme.

The amended three-year forecast programme is published in the manner mentioned above.

The three-year forecast programme must include in particular :

–For the budget year in question, an indication, for each contract, of the subject of the call for competition, the nature of the service, the place of performance, the method of award envisaged, the provisional estimate of the cost of the service, the forecast period for publication of the notice of the call for competition and, where appropriate, a reference to the reservation of the contract for very small, small and medium-sized enterprises, cooperatives, cooperative unions and self-employed entrepreneurs;

–For the two years following the year in question, an aggregated presentation of the main projects or operations that the project owner plans to carry out as part of the three-year budget programming.

The three-year forecast programme for contracts is drawn up in accordance with the model laid down by order of the Minister of Finance.

ART. 18. –Call for expressions of interest

The purpose of the call for expressions of interest is to enable the project owner to identify potential competitors prior to launching the call for competition.

The call for expressions of interest is the subject of a notice published in at least one nationally circulated newspaper and on the public procurement portal for a period fixed by the project owner

The notice of call for expressions of interest shall specify in particular:

- the subject of the service to be provided;
- the documents to be produced by competitors ;
- the place where the file can be removed;
- the place where applications may be received;
- the deadline for receipt of applications.

The call for expressions of interest may not have the effect of limiting the number of competitors.

The call for expressions of interest does not confer any rights to potential competitors and does not justify recourse to the negotiated procedure or the restricted invitation to tender, unless the conditions for recourse to these procedures are met.

ART. 19. –Methods of awarding contracts

With the exception of architectural services governed by the provisions of Chapter V of this decree, works, supply or service contracts are awarded through call for tenders, competition or according to the negotiated procedure.

I) Call for tenders:

1 –The call for tenders may be open or restricted.

A call for tenders is said to be « open » when any competitor can obtain the consultation file and submit a bid. It is said to be « restricted » when only those competitors whom the project owner has decided to consult may submit bids.

In addition to the open call for tenders, contracts may be awarded by means of simplified open call for tenders where the estimated amount of the contract is equal to or less than one million (1,000,000) dirhams excluding tax.

Simplified open call for tenders is awarded under the conditions and in accordance with the procedures laid down by this Decree for open call for tenders, subject to the following:

- the simplified open tendering commission is composed of the chairman and a member appointed by the project owner, a representative from the General Treasury of the Kingdom or a representative of the Ministry of Finance as provided for in Article 38 of this decree, as the case may be;
- the simplified open tender notice is published on the public procurement portal and in at least one newspaper;
- the deadline for advertisement is set at least ten days before the expected date for the bid opening session;
- The competitor's technical file referred to in B of I) of article 28 of this decree does not include the reference certificates and the workload plan declaration.

2 –A call for tenders is said to be « with pre-selection » when only competitors with sufficient capacity, particularly from a technical and financial point of view, are authorised to submit tenders, following the opinion of a pre-selection commission.

3 –The call for tenders may be national or international.

a) A call for tenders is said to be « national » when only competitors established in Morocco are eligible to participate.

Unless duly pattern justified by an administrative certificate drawn up by the project owner under his responsibility, recourse is made to a national call for tenders when the estimated value of the contract is less than or equal to ten million (10,000,000) dirhams excluding tax for works contracts and one million (1,000,000) dirhams excluding tax for supply and service contracts.

The thresholds referred to above may be modified by order of the Minister of Finance

b) The call for tenders is said to be « international » when competitors established or not established in Morocco are allowed to take part in it. This type of call for tenders concerns contracts whose estimated amount is greater than the thresholds referred to above.

II) Competition:

The competition pits competitors against each other on the basis of a programme for the production of a service requiring specific technical, aesthetic or financial research.

III) The negotiated procedure:

The negotiated procedure allows the project owner to negotiate the award of the contract with one or more competitors under the conditions laid down in section III of chapter IV of this decree.

IV) Notwithstanding the provisions of subparagraph 1 of this article, services may be provided on the basis of purchase orders, in accordance with the conditions set out in article 91 of this decree.

Chapter IV

Public procurement procedures

Section one. – Call for tenders

First subsection. – Open or restricted call for tenders

ART. 20. –Principles and modalities

1 –Open or restricted call for tenders are governed by the following principles:

- a) the call for competition;
- b) Opening of bids in public session;
- c) the evaluation of tenders by a tendering commission;
- d) The choice by the tendering commission of the most economically advantageous tender to be submitted to the project owner;
- e) The obligation for the project owner issuing the call for tenders to inform the members of the tendering commission of the estimated cost of the services in accordance with the provisions of article 39 of this decree.

2 - Contracts may only be awarded on the basis of a restricted call for tenders for services that can only be carried out by a limited number of contractors, suppliers or service providers, due to their nature, their particularity, the importance of skills and resources to be mobilised, means and tools to be used and the estimated amount of which is less than five million (5,000,000) dirhams excluding taxes.

The project owner must consult at least three competitors who can best meet the needs to be met.

The use of a restricted call for tenders must be the subject of an administrative certificate, drawn up by the project owner, explaining the reasons which led him to choose this procedure.

3 - The call for tenders may be « at a discount or mark-up » or « on price offers ».

a) In the case of calls for tenders « at a discount or mark-up », the competitor subscribes to the commitment to carry out the work or services or deliver the supplies estimated by the project owner, in return for a « discount or mark-up » expressed as a percentage.

The mark-up or discount granted by the competitor must not be zero and must be expressed as a percentage to no more than the second decimal place, failing which the competitor's bid will be disqualified.

Public contracts for security or cleaning of administrative buildings and maintenance of green areas are awarded by means of a call for tenders at mark-up.

b) For calls for tenders based on "price offers", the tender documents only contain information on the nature and importance of the works, supplies or services for which the competitor proposes prices and fixes the final amount.

ART. 21. –Consultation regulations

The consultation regulations is a document that lays down the conditions for submitting bids and the criteria and procedures for awarding the contract.

All calls for tenders are subject to consultation regulations drawn up by the project owner.

These consultation regulations must, particularly, include the following information:

- the list of documents to be provided by competitors as set out in article 28 of this decree ;
- the criteria for the eligibility of competitors and the award of the contract. These criteria must be directly related to the subject of the contract to be concluded, be objective, non-discriminatory and not disproportionate to the scope of the services to be provided.

The eligibility criteria may be subject to weighting coefficients which must not, under any circumstances, have the effect of restricting competition;

- the rate of fifteen per cent (15%) to be applied in the context of the national preference provided for in Article 147 of this Decree;
- the convertible currency or currencies in which the price of the financial offer must be expressed, where the competitor is not established in Morocco.

For the purposes of evaluating and comparing bids, the amounts of bids expressed in foreign currencies must be converted into dirhams.

This conversion is made on the basis of the reference exchange rate of the dirham in force, given by Bank Al-Maghrib, on the first working day of the week preceding that of the bid opening day;

- the language(s) in which the documents contained in the files and the bids submitted by the competitors must be drawn up;
- Where applicable, the terms and conditions under which the variants are reviewed and evaluated with respect to the basic solution provided for in the special specifications book, in accordance with the provisions of Article 33 of this Decree;
- Where applicable, the maximum number of lots that may be awarded to a single competitor and the method of awarding lots in accordance with the provisions of Article 10 of this Decree ;
- Where applicable, the number, designation and estimated amount of the main unit price(s).

The eligibility and award criteria of the contract set out in the consultation regulations are as follows:

1 – For works contracts :

The eligibility criteria for competitors take especially into account :

- a) The guarantees provided by competitors and their legal, technical and financial capacities ;
- b) Competitors' professional references, if any;
- c) The importance of the workload plan, where applicable.

These criteria are assessed on the basis of the documents contained in the administrative and technical files.

Where the submission of a technical offer provided for in Article 31 of this Decree is required, the eligibility criteria may be supplemented, in particular, by the following criteria:

- the human resources and material means to be assigned to the site ;
- the specific experience and profile of the staff with regard to the nature of the services to be provided;
- the number and experience of craftsmen and maalmens (master craftsmen) that the competitor undertakes to hire for services relating to the preservation of medinas and the restoration of traditional, historic and ancient works;
- The proposed completion schedule;
- The construction methods and processes;
- The aesthetic and functional qualities of the service;
- Performances related to environmental protection and sustainable development;
- the development of renewable energies and energy efficiency;
- Conservation of water resources;
- The extent to which products of Moroccan origin are used;
- The location of the competitor in the region concerned by the project, where applicable.

The technical score is determined on the basis of the score awarded to each criterion of the technical offer. An eligibility threshold for competitors is set in the consultation regulations.

For the award of the contract, the only criterion to be taken into account, after the admission of competitors, is the most economically advantageous bid as defined in article 43 of this decree.

2 –For supply contracts:

The eligibility criteria for competitors take especially into account :

- a) The guarantees provided by competitors and their legal, technical and financial capacities ;
- b) Competitors' professional references, if any;
- c) The importance of the workload plan, where applicable.

These criteria are assessed on the basis of the documents contained in the administrative and technical files.

Where the submission of a technical offer is required, the eligibility criteria may, depending on the case, be supplemented, in particular, by the following criteria:

- the functional qualities of the supplies;
- Guarantees provided;
- After-sales service;
- the human resources and material means to be mobilised to carry out the service;
- Performances related to environmental protection and sustainable development;
- the development of renewable energies and energy efficiency;
- Conservation of water resources ;
- the use of Moroccan craft products, where appropriate;
- The location of the competitor in the region concerned by the services, where applicable.

The technical score is determined on the basis of the score awarded to each criterion of the technical offer. An eligibility threshold for competitors is set in the consultation regulations.

Once the competitors have been admitted, the contract is awarded solely on the basis of the most economically advantageous tender as defined in article 43 of this decree.

However, for supplies involving a cost of use and/or maintenance, the « cost of use and/or maintenance » criterion must be taken into account when awarding the contract.

To this end, the contract is awarded on the basis of an overall price combining the purchase price and the monetary evaluation of the cost of use and/or maintenance over a specified period.

3 –For service contracts:

The eligibility criteria for competitors take especially into account :

- The guarantees provided by competitors and their legal, technical and financial capacities ;
- Competitors' professional references, if any;
- the importance of the workload plan, where applicable;
- The location of the competitor in the region concerned by the project, where applicable.

These criteria are assessed on the basis of the documents contained in the administrative and technical files.

Where the submission of a technical offer is required, the eligibility criteria may, depending on the case, be supplemented, in particular, by the following criteria:

- the proposed methodology;
- the human resources and material means to be mobilised to carry out the service;
- the timetable for allocating human resources ;
- the innovative nature of the bid;
- the quality of the technical assistance;
- the rate of transfer of skills and knowledge;
- the guarantees provided;
- the proposed implementation schedule;
- the specific experience and profile of the staff with regard to the nature of the services to be provided;
- Performances related to environmental protection and sustainable development;
- the development of renewable energies and energy efficiency;

- Conservation of water resources ;
- the rate of use of Moroccan experts by competitors not established in Morocco for contracts relating to studies, including contracts for services relating to the design, development and implementation of information systems.

The technical score is determined on the basis of the score awarded to each criterion of the technical offer. An eligibility threshold for competitors is set in the consultation regulations.

Once the competitors have been admitted, the contract is awarded on the basis of :

- the most economically advantageous tender as defined in article 43 of this decree for service contracts other than study contracts;
- the most economically advantageous tender within the meaning of article 144 of this decree for study contracts.

The consultation regulations must be signed by the project owner before the contract award procedure is launched. This signature takes the form of a scanned or electronic signature for the consultation regulations published on the public procurement portal.

ART. 22. –Tender documents

1 –All calls for tenders shall be the subject of a file drawn up by the project owner, which shall include :

- a) A copy of the tender notice or the circular letter, as the case may be, as provided for in Article 23 of this decree;
- b) A copy of the special specifications book;
- c) Plans and technical documents, where applicable;
- d) The model of the act of commitment referred to in Article 30 of this decree;
- e) Models of the price schedule and the itemised estimate or the model of the price schedule - itemised estimate in the case of a unit price contract;
- f) The model of the supply price schedule, where this is provided for in the special specifications book;
- g) For global price contracts, the model of the global price schedule and the breakdown of the global amount by item with or without indication of the lump-sum quantities;
- h) The model of the detailed breakdown of prices, where applicable;
- i) The model of the declaration of honor ;
- j) The model of the workload plan declaration;
- k) The consultation regulations provided for in article 21 above.

2 –The project owner sends the tender documents to the members of the tendering commission provided for in Article 38 of this decree at least six days before the date of publication of the tender notice on the public procurement portal or the dispatch of the circular letter to competitors, as the case may be.

The members of the tendering commission have a period of six days from the date of receipt of the tender documents to send any comments they may have to the project owner.

3 –The tender documents need to be available prior to publication of the tender notice and must be made available to competitors from the first publication of the notice in one of the publication media referred to in Article 23 below until the deadline for submission of tenders.

The tender documents can be downloaded from the public procurement portal.

4 –The names of competitors who have withdrawn or downloaded the tender documents shall be entered in the special register provided for in Article 4 of this Decree, with an indication of the date and time of withdrawal or downloading.

5 –The tender documents are provided free of charge to competitors, with the exception of plans and technical documents, the reproduction of which requires specific technical equipment. The fee for providing these plans and technical documents is set by order of the Minister of Finance.

6 –If, for any reason whatsoever, the tender documents are not delivered to the competitor or his representative who has come to the place indicated in the tender notice, the project owner will issue him, on the same day, a certificate stating the reason why the tender documents have not been delivered and indicating the day on which they are to be collected so that the competitor can prepare his file. A copy of this certificate is kept in the contract file.

If the tender documents have not been delivered by the date indicated in the certificate issued to him, the competitor may refer the matter, by any means capable of giving a certain date, to the hierarchical authority to which the project owner concerned reports, in the case of the State, public institutions and other legal entities governed by public law as referred to in article 2 of this decree or the governor of the prefecture or province or the wali of the region, as the case may be, in the case of local authorities, in order to explain the circumstances in which his request to obtain the aforementioned file was made and the response he has received.

After ascertaining that the request is well-founded, the authority seized shall invite the project owner in writing to immediately provide the applicant with the tender documents and, if necessary, to postpone the date on which the bids are to be opened for a period at least equivalent to that between the date on which the request is made and the date on which the documents are provided to the competitor concerned.

The notice of postponement is published on the public procurement portal and in two nationally circulated newspapers chosen by the project owner, one of which is in Arabic.

7 –Exceptionally, the project owner may make changes to the tender documents without changing the subject of the contract. In this case, these changes are communicated to all competitors who have withdrawn or downloaded the tender documents and are included in the tender documents made available to the other competitors.

These changes may be made at any time during the initial deadline for advertising and no later than seven days before the date of the bid opening session.

After this deadline, the project owner must postpone the date of the bid opening session by means of a corrective notice.

Where the changes made to the tender documents require the publication of a corrective notice, this shall be published in accordance with the provisions of the first subparagraph of the second paragraph of Article 23 of this Decree.

In this case, the bid opening session may only be held after the expiration of a minimum period of ten days. This period runs from the day after the date of publication of the corrective

notice in the latest publication medium, without the date of the new session being earlier than that provided for in the initial advertising notice.

In all cases, the deadline for advertising provided for in the third subparagraph of the second paragraph of I) of Article 23 below must be respected.

Competitors who have withdrawn or downloaded the tender documents must be informed of any changes that have been made and of the new date for the opening of bids, if applicable.

The corrective notice is issued in one of the following cases:

- a) When the project owner makes changes to the tender documents without complying with the seven-day time limit set out above ;
- b) When the changes to be made to the tender documents require additional time for the preparation of the tenders;
- c) To correct manifest errors in the published notice;
- d) When the project owner finds, after publication of the notice that the period between the date of publication of the notice and the date of the bid opening session does not comply with the deadline for advertising provided for in Article 23 below.

8 –If a competitor considers that the period provided for in the advertising notice for the preparation of bids is insufficient with regard to the complexity of the services covered by the contract, he may, during the first half of the deadline for advertising, ask the project owner, by letter sent by any means capable of giving a certain date, to postpone the date of the bid opening session. This letter must contain all the information necessary for the project owner to assess the request for postponement.

If the project owner acknowledges the merits of the competitor's request submitted to him, he will postpone the date of the bid opening session. The postponement, the duration of which is left to the discretion of the project owner, is the subject of a corrective notice which is published in the same form as the tender notice.

Postponement of the date of the bid opening session may be requested only once, regardless of which competitor requests it.

The project owner will inform competitors who have withdrawn or downloaded the tender documents of this postponement.

ART. 23. –Advertising of the call for tenders

I) Open call for tenders:

1 –Subject to the provisions of Article 134 of this Decree, an open call for tenders, whether national or international, must be the subject of a notice setting out :

- a) The subject of the call for tenders with an indication of the place where the services are to be performed, the municipality, province or prefecture and region concerned ;
- b) The project owner issuing the call for tenders;
- c) The office(s) and address of the project owner where the tender documents may be collected;
- d) The office(s) and address of the project owner where bids may be submitted or addressed;
- e) The place, day and time fixed for holding the bid opening session, specifying that competitors can submit their bids directly to the president of the tendering commission at the opening of the session;

- f) The reference to the article in the consultation regulations which sets out the list of supporting documents that each competitor must provide;
- g) The amount in value of the provisional bail, when it is required ;
- h) The amount of the estimated cost of services set by the project owner;
- i) Where applicable, the date of the meeting or site visit that the project owner intends to organise for the competitors. This date must be during the last third of the advertising period and no later than five days before the date scheduled for the opening of tenders.

If the day scheduled for the meeting or site visit is declared a public holiday or non-working day, the meeting or site visit will be held on the following working day at the same time;

- j) Where applicable, the place for receipt of prospectuses and notices, under the conditions laid down in Article 37 of this Decree;
- k) The email address of the public procurement portal and, where applicable, that of the website or websites used by the project owner to publish the tender notice;
- l) The purchase price of the plans and/or technical documents, if applicable.

2 –The open call for tenders notice is published on the public procurement portal and in at least two nationally circulated newspapers, chosen by the project owner, one of which is in Arabic. It is published in the language of publication of the chosen newspapers.

At the same time, the open call for tenders notice may be brought to the attention of potential competitors and, where appropriate, professional bodies, by inserting it in specialised publications or by any other means of advertising.

The deadline for advertising the open call for tenders notice in the two newspapers and on the public procurement portal is set at least twenty-one days before the date set for the opening of tenders. This period runs from the day after the date of publication of the notice in the last publication medium.

However, the aforementioned period may be extended to at least forty days for the following contracts:

- a) Works contracts awarded on behalf of the State, local authorities, public institutions or other legal entities governed by public law as referred to in Article 2 of this Decree, the estimated amount of which is equal to or greater than seventy-five million five hundred and fifty thousand (75,550,000) dirhams excluding tax;
- b) Supply and service contracts awarded on behalf of the State, the estimated amount of which is equal to or greater than one million nine hundred and sixty-four thousand three hundred (1,964,300) dirhams excluding tax;
- c) Supply and service contracts awarded on behalf of local authorities, the estimated amount of which is equal to or greater than five million three hundred and sixty-four thousand and fifty (5,364,050) dirhams excluding tax;
- d) Supply and service contracts awarded on behalf of public institutions or other legal entities governed by public law referred to in article 2 of this decree, the estimated amount of which is equal to or greater than eight million seven hundred thousand (8,700,000) dirhams excluding tax.

These thresholds may be modified by order of the Minister of Finance.

When the contract is allotted, the thresholds referred to above are assessed in respect of the cumulative amount of all the lots making up the service.

II) Restricted call for tenders:

The restricted call for tenders is the subject of a circular letter sent by registered letter with acknowledgement of receipt, on the same day, to all competitors that the project owner decides to consult.

Subject to the provisions of Article 134 of this Decree, this circular letter shall contain the following information:

- a) The subject of the restricted call for tenders and the place where the services are to be performed, with an indication of the municipality, province or prefecture and region concerned ;
- b) The project owner issuing the call for tenders;
- c) The office(s) and address of the project owner where the competitor can collect the tender documents;
- d) The office and address of the project owner where bids may be submitted or addressed;
- e) The place, day and time fixed for holding the public session for opening bids, specifying that competitors can submit their bids directly to the president of the tendering commission at the opening of the session;
- f) The reference to the article in the consultation regulations which sets out the list of supporting documents that each competitor must provide;
- g) The amount in value of the provisional bail , where such a bail is required ;
- h) The estimated cost of services set by the project owner;
- i) Where applicable, the place for receipt of prospectuses and notices, under the conditions laid down in Article 37 of this Decree;
- j) The date of the meeting or site visit that the project owner intends to organise for the competitors, if applicable. This date must be during the second third of the deadline for sending the circular letter and no later than three days before the date scheduled for the opening of bids;
- k) The purchase price of the plans and/or technical documents, if applicable.

The aforementioned circular letter must be sent at least ten days before the date scheduled for the bid opening session. This period begins on the day following the date on which the circular letter is sent.

The tender documents are attached to the circular letter.

ART. 24. –Provisional bail

1 - When the project owner requires the provision of a provisional bail, the special specifications book shall determine, in accordance with the laws and regulations in force, the importance of the financial guarantees to be provided by each competitor in respect of the provisional bail.

The amount of the provisional bail must be expressed in terms of value, but must not exceed two per cent (2%) of the estimated cost of the services established by the project owner.

2 –The provisional bail becomes the property of the State, the local authority, the public institution or the legal entity governed by public law, as applicable, in one of the following cases:

- if the competitor's bid is rejected on the grounds of referred to in a), b), c), d) or e) of B) of paragraph 9 of II) of article 43 of this decree ;
- If the competitor withdraws his bid during the period of validity of bids provided for in article 36 of this decree;

- if the successful tenderer refuses to sign the contract ;
- if the holder refuses to acknowledge receipt of the contract approval notified to him within the time limit set in article 143 of this decree.

In the event that the special specifications book does not provide for a provisional bail, a penalty of one per cent (1%) of the amount of the estimate drawn up by the project owner shall be applied to any competitor who is in one of the cases referred to above.

ART. 25. –Requests for clarification inquires and information of competitors

Any competitor may request from the project owner, by letter sent by any means capable of providing a certain date, clarifications or information regarding the call for tenders or the related documents. This request shall be admissible only if it reaches the project owner at least seven days before the date scheduled for the bid opening session.

The project owner must respond, in the same way, to any request for information or clarification received, no later than three days before the date scheduled for the bid opening session.

Any clarification or information provided by the project owner to a competitor at the latter's request must be communicated, on the same day and in the same manner, to the other competitors who have withdrawn or downloaded the tender documents file and to the members of the tendering commission.

This clarification or information is made available to any potential competitor on the public procurement portal.

Under no circumstances may the identity or name of the competitor or competitors making the request provided for in the first subparagraph of this article be disclosed.

ART. 26. –Meeting or site visit

The project owner may schedule a meeting or a site's visit under the conditions set out in I) of paragraph 1 of I) and in j) of II) of Article 23 of this Decree.

When a meeting or a site's visit is conducted, the project owner draws up minutes listing the requests for clarification that he has received and the answers that he has provided during this meeting or site's visit. These minutes are published on the public procurement portal and communicated to all competitors and to the members of the tendering commission by letter sent by any means capable of providing a certain date.

It is not compulsory for competitors to attend the meeting or visit the site. The absence of any competitor from the meeting or site's visit may not, therefore, constitute grounds of the elimination of the competitor concerned.

Competitors who did not attend the meeting or who did not take part in the site's visit may not, under any circumstances, make any observations or submit any complaint regarding the conduct of the meeting or the site's visit as reported in the minutes communicated to them or made available to them by the project owner.

ART. 27. –Conditions required from competitors

Natural or legal persons may validly participate in and be awarded public contracts under the procedures laid down in this Decree if they :

- Can prove that they have the required legal, technical and financial capacities ;
- Are in a regular tax situation, and have submitted their declarations and paid the sums due or, in the absence of payment, have provided guarantees deemed sufficient by the accountant responsible for recouping tax, in accordance with the legislation in force on the collection of public debts;
- Are affiliated to the National Social Security Fund or another specific social security scheme, and regularly submit their salary statements and are in regular status with these organizations;
- Carry out one of the activities related to the subject of the contract.

The following are not eligible to participate in calls for tenders:

- Persons in judicial liquidation ;
- Persons in judicial recovery, unless special authorisation is issued by the competent judicial authority;
- Persons who have been the subject of a temporary or permanent exclusion decision taken in accordance with the provisions of article 152 of this decree;
- the persons referred to in article 68 of the above-mentioned organic law no. 111-14 for contracts awarded by the regions;
- The persons referred to in article 66 of the above-mentioned organic law no. 112-14 for contracts awarded by the prefectures or provinces;
- the persons referred to in article 65 of the above-mentioned organic law no. 113-14 for contracts awarded by municipalities;
- Persons representing more than one competitor in the same contract, in the case of a single-lot contract or a single lot in the case of an allotment contract;
- Service providers who have contributed to the preparation of the tender documents file concerned;
- Holders whose contracts have been terminated for a fault for which they are responsible under the related completion contracts.

ART. 28. –Justification of capacities and qualities

I) Each competitor must submit an administrative file and a technical file.

A. The administrative file includes:

1 –For each competitor, at the time of submission of bids:

- a) The document or documents justifying the powers conferred upon the person acting on behalf of the competitor. These documents vary according to the legal form of the competitor:
- In the case of a self-employed entrepreneur or an individual acting on his own behalf, no documentation is required;
 - In the case of a competitor's representative , he or she must submit, as appropriate :
 - A certified copy of the legalized power of attorney, when acting on behalf of a natural person ;
 - An extract from the company status and/or a certified copy of the minutes of the competent body granting him power to act on behalf of the company;
 - The act through which the authorised person delegates his power to a third person, if applicable.

–In the case of a cooperative or a union of cooperatives, the document or documents justifying the powers conferred on the person acting on behalf of the cooperative or the union of cooperatives.

- b) The declaration of honor;
- c) The original receipt for the provisional bail or the certificate of the personal and joint guarantee in lieu thereof, where applicable;
- d) The founding agreement of the group provided for in article 150 of this decree or its certified copy, where the competitor is a group.

2 –For the competitor to whom it is planned to award the contract under the conditions set out in article 43 of this decree:

- a) A certificate or a certified copy of the original certificate issued less than one year by the tax collector of the place of taxation, certifying that the competitor is in a regular tax situation or, in the absence of payment that he has constituted the guarantees provided for in article 27 above.

This certificate must state the activity in respect of which the competitor is taxed.

- b) A certificate or a certified copy of the original issued less than one year by the National Social Security Fund or by any other social security organization certifying that the competitor is in a regular situation with the organization concerned;
- c) A copy of the certificate of registration in the trade register (model 9) for persons subject to compulsory registration in the trade register in accordance with legislation in force;
- d) Certified copies of certificates or authorisations required for the performance of the services covered by the contract in accordance with the legislation and regulations in force, where applicable;
- e) Supporting documents of the nationality of the company and its directors in the case of contracts awarded for national defence or public security purposes, where required by the project owner;
- f) The equivalent of the certificates referred to in paragraphs a), b) and c) above, issued by the administrations or competent bodies of their countries of origin or provenance, for competitors not established in Morocco.

If the competent administrations or bodies fail to issue these documents, they are replaced by a certificate issued by a judicial or administrative authority in the country of origin or provenance certifying that the aforementioned documents have not been produced.

The date on which the documents referred to in a) and b) above are submitted to the project owner will be used as the basis for assessing their validity.

B. The technical file:

1 - For current services, the technical file shall include:

- a) A note indicating the human and technical resources of the competitor and mentioning, where appropriate, the place, date, nature and importance of the services which he has carried out or in the performance of which he has participated, with details of the quality of his participation;
- b) The statement of the competitor's workload plan provided for in article 4 of this decree, where the consultation regulations so provide.

2 –For non-routine services, the technical file shall include, by virtue of their nature and importance, the following documents:

- a) A note indicating the human and technical resources of the competitor and mentioning, where appropriate, the place, date, nature and importance of the services which he has carried out or in the performance of which he has participated, with details of the quality of his participation;
- b) The certificates or their certified copies issued by project owners, whether public or private, or by specialists/men of art under whose supervision the competitor has carried out these services, or by contract holders for subcontracted services.

Each certificate notably specifies the nature of the work, the amount and the year in which it was carried out, the name and position of the signatory and his assessment.

For the restoration of traditional, historical and ancient works, the above-mentioned reference certificates must mention that the work carried out relates to buildings classified in accordance with the provisions of law no. 22-80 on the conservation of historical monuments and sites, inscriptions, works of art and antiques, as amended and supplemented.

Under no circumstances may the project owner require reference certificates that are disproportionate to the nature and consistency of the services and the amount of the contract;

- c) The workload plan declaration, where this is provided for in the consultation regulations;
- d) The document or documents justifying the competitor's financial capabilities, where this is provided for in the consultation regulations;

3 –Where a qualification and classification system is provided for the contracts concerned by the services, the certificate issued under this system replaces the documents referred to in a) of paragraph 1 of B and in subparagraphs a), b) and d) of paragraph 2 of B of this article.

4 –Where an approval system is provided for the contracts concerned by the services, the certificate issued under this system replaces the documents referred to in subparagraph a) of paragraph 1 of B and subparagraphs a), b) and d) of paragraph 2 of B of this article.

5 –Competitors who are not established in Morocco are required to produce, as the case may be, the documents in the technical file provided for in paragraphs 1 or 2 of B of this article.

II) If the competitor is a public institution, he must provide:

1 –at the time of submission of the tender, in addition to the technical and administrative file provided for in b) and c) of subparagraph 1 of A of I) of this article, a copy of the text authorising him to perform the tasks related to the services covered by the contract.

2 –If it is intended to award him the contract :

a) A certificate or a certified copy of the original certificate issued less than one year by the tax collector of the place of taxation, certifying that he is in a regular tax situation or, in the absence of payment that he has constituted the guarantees provided for in article 27 above.

This certificate must state the activity in respect of which the competitor is taxed.

The aforementioned certificate is only required from public institutions subject to tax.

b) A certificate or a certified copy of the original issued less than one year by the National Social Security Fund or by any other social security organization certifying that the competitor is in a regular situation with the organization concerned;

The date on which the documents referred to in a) and b) above are submitted to the project owner will be used as the basis for assessing their validity.

III) If the competitor is a cooperative or a union of cooperatives, he must provide :

1 –at the time of submission of the tender, in addition to the technical and administrative file provided for in a), b) and c) of subparagraph 1 of A of I) of this article, the certificate of registration in the local register of cooperatives.

2 –And where it is intended to award the contract to the competitor :

a) A certificate or a certified copy of the original certificate issued less than one year by the tax collector of the place of taxation, certifying that the competitor is in a regular tax situation or, in the absence of payment, that he has constituted the guarantees as provided for in article 27 above.

This certificate must state the activity in respect of which the cooperative or the union of cooperatives is taxed.

b) A certificate or a certified copy of the original certificate issued less than one year by the National Social Security Fund certifying that the cooperative or the union of cooperatives is in a regular tax situation with this body in accordance with the provisions of article 27 above.

The date on which the documents referred to in a) and b) above are submitted to the project owner will be used as the basis for assessing their validity.

IV) IF the competitor is a self-employed entrepreneur, he must provide :

1 –At the time of submission of the tender, in addition to the technical and administrative file provided for in b) and c) of subparagraph 1 of A of I) of this article, the certificate of registration in the national register of self-employed entrepreneurs or a certified copy of the original, issued less than one year.

2 –And where it is intended to award the contract to the competitor : a certificate or a certified copy of the original certificate issued less than one year by the tax collector of the place of taxation, certifying that the competitor is in a regular tax situation or, in the absence of payment, that he has constituted the guarantees as provided for in article 27 above.

This certificate must state the activity in respect of which the self-employed entrepreneur is taxed.

The date on which this document is submitted to the project owner will be used as the basis for assessing its validity

ART. 29. –Declaration of honor

The declaration of honor shall include the following information:

1 –In the case of a natural person, the last name, first name, address, phone and fax numbers and the competitor's e-mail address ;

2 –In the case of a company, the company name or corporate name, its legal form, its share capital, the address of its registered office, the last name, first name, capacity in which the representative of the competitor is acting and the powers conferred on him and the company's phone and fax numbers and e-mail address;

3 –In the case of a cooperative or a union of cooperatives, the name of the cooperative or the union of cooperatives, its capital, its registered office, the last name, first name and the capacity in which the representative of the competitor is acting and the powers conferred on him, the phone and fax numbers and the e-mail address of the cooperative or the union of cooperatives;

4 –The registration number in the trade register for competitors subject to compulsory registration in the trade register, the registration number in the local register of cooperatives or the registration number in the national register of self-employed entrepreneurs, as appropriate;
 5 –Professional tax registration number, affiliation number with the National Social Security Fund or any other special social security scheme for competitors based in Morocco, and bank identity statement.

The declaration of honor shall also state that the competitor:

- a) Undertakes to cover, under the conditions laid down in the specifications book, by an insurance policy, the risks arising from his professional activity;
- b) undertakes, if he intends to subcontract, to ensure that subcontracting does not exceed fifty percent (50%) of the contract amount and that it does not concern the lot or the main body of the contract, and to ensure that the subcontractors he uses meet the conditions laid down in Article 27 of this Decree;
- c) Certifies that he has the authorisations required for the performance of the services as provided for by the laws and regulations in force ;
- d) Certifies that he is not in judicial liquidation or judicial recovery, and if he is in judicial recovery, that he is authorised by the competent judicial authority to participate in calls for tenders;
- e) Undertakes not to use, either personally or through an intermediary, fraud practices or corruption of persons involved in any capacity whatsoever in the procedures for awarding, managing and performing the contract;
- f) Undertakes not to make, either personally or through an intermediary, any promises, donations or gifts in order to influence the procedure for concluding the contract and its performance ;
- g) Certifies that he is not in a situation of conflict of interest;
- h) Certifies that he has not participated in the preparation of the tender documents in question ;
- i) Certifies the accuracy of the information contained in the declaration of honor and in the documents provided in his application file, failing which the coercive measures provided for in article 152 of this decree will be applied.

The declaration of honor must be signed by the competitor.

ART. 30. –Content of competitors' files

The files submitted by competitors must include, in addition to the initialled and signed special specification book and consultation regulations, the administrative and technical file documents provided for in article 28 of this decree, a financial offer and, if the consultation regulations so require, a technical offer as provided for in article 31 below and, where applicable, the prospectuses, notices or other technical documents provided for in article 37 of this decree.

The financial offer includes:

- a) The act of commitment by which the competitor undertakes to perform the services covered by the contract in accordance with the conditions laid down in the specifications book, for a price that he offers. It is drawn up in a single copy.

This act of commitment, signed by the competitor or his duly authorised representative, must contain all the required information, including the bank identity statement (RIB).

The total amount of the act of commitment must be stated in figures and in words, taking into account any discount.

If there is a discrepancy between the amount stated in figures and the amount stated in words, the amount stated in words must be used.

In the case of «at a discount or mark-up» calls for tenders, the act of commitment must specify the percentage of the discount or mark-up subscribed by the competitor in relation to the estimate drawn up by the project owner.

In the case of framework contracts, the act of commitment must specify the maximum and minimum amounts of the contract.

When the act of commitment is signed by a group as defined in article 150 of this decree, it must be signed either by each member of the group, or only by the authorised representative, if the latter provides proof of authorisation in the form of a legalised power of attorney to represent the members of the group during the contract award procedure.

The act of engagement of the group concerned must also specify the amount corresponding to the share due to each member of the said group.

b) The price schedule and the itemised estimate for unit price contracts or the global price schedule and the breakdown of the global amount for global price contracts, the models for which are given in the tender documents file.

The unit prices indicated on the price schedule and on the itemised estimate, and those indicated on the price schedule - itemised estimate and the lump-sum prices in the global price schedule and the breakdown of the global amount must be stated in figures.

In the event of a discrepancy between the unit prices indicated on the price schedule and those indicated on the itemised estimate, the prices on the price schedule shall prevail.

In the event of a discrepancy between the total amounts of the global price schedule and those of the breakdown of the global amount, the total amount of the breakdown of the global amount shall prevail.

The total amounts indicated on the price schedule - itemised estimate, on the global price schedule and on the breakdown of the global amount must be stated in figures.

In the case of «at a discount or mark-up» calls for tenders, the price schedule - itemised estimate or the global price schedule must, as the case may be, specify the percentage of the discount or mark-up subscribed by the competitor with regard to the estimate drawn up by the project owner.

In the event of a discrepancy between the total amount indicated on the act of commitment and that indicated on the itemised estimate, on the price schedule - itemised estimate or on the global price schedule, as the case may be, the amount of the latter documents shall prevail in order to establish the actual amount of the act of commitment

c) The detailed breakdown of prices where applicable.

d) The supply price schedule, where the special specifications book so provide.

ART. 31. –Submission of a technical offer

The project owner may, in the consultation regulations, require competitors to submit a technical offer, where this is justified by the particular nature of the services to be performed, due to their complexity or the importance of the resources to be deployed to perform them.

Depending on the subject of the contract, the technical offer may relate in particular to :

- the proposed methodology, specifying the technical advantages it offers and the method for assessing their financial impact;
- the means to be implemented to carry out the services;
- The completion schedule;
- After-sales service;
- Performances related to environmental protection and sustainable development;
- the development of renewable energies and energy efficiency;
- Conservation of water resources ;
- The specific experience and profile of the staff with regard to the nature of the services to be provided;
- The extent to which craftsmen and maalmens (master craftsmen) are used for services relating to the preservation of medinas and the restoration of traditional, historic and ancient works;
- the rate of use of Moroccan experts by competitors not established in Morocco for study contracts and for contracts relating to the design, development and implementation of information systems;
- the extent to which Moroccan craft products are used, where appropriate ;
- the timetable for allocating resources ;
- the rate of transfer of skills and knowledge;
- The functional qualities of the service;
- The innovative nature of the offer
- the quality of the technical assistance;
- the guarantees offered as part of the service.

The technical offer must only cover those elements that are directly related to the performance of the service covered by the contract and must only include the documents relating to these elements.

To this end, the consultation regulations set out the documents that must make up the technical offer and the eligibility criteria for this offer in accordance with the provisions of articles 21 and 51 of this decree.

Certificates issued by men of art under whose supervision the services were carried out, by public or private project owners or by contract holders in respect of the services they have subcontracted may not be included, as documents, in the technical offer, nor may they be used to assess this offer.

The technical offer may be submitted for the basic solution and/or for the alternative solution.

ART. 32. –Submission of competitors' files

1 –The file to be submitted by each competitor shall be placed in a sealed envelope bearing the following information :

- the name and address of the competitor;

- the subject of the contract and, where applicable, an indication of the lot or lots in the case of an allotment contract;
- the date and time of the bid opening session;

- the warning that «the envelope must only be opened by the president of the tendering Commission at the public bid opening session ».

2 – This envelope contains two separate envelopes, when the technical offer is not required, or three separate envelopes, when the submission of a technical offer, with or without a variant offer, is required:

a) the first envelope contains, in addition to the documents in the administrative and technical files, the special specifications book and the consultation regulations initialled and signed and marked « read and accepted» by the competitor or his duly authorised representative.

This envelope must be sealed and clearly marked « administrative and technical files»;

b) The second envelope contains the financial offer. This envelope must be closed and clearly marked « financial offer »;

c) The third envelope contains the technical offer. It must be closed and clearly marked « technical offer », whether or not it includes a variant offer.

3 –The three envelopes referred to above shall clearly specify :

- The name and address of the competitor;
- the subject of the contract and, where applicable, an indication of the lot or lots concerned;
- the date and time of the bid opening session.

4 –In addition to the envelope provided for in the first paragraph above, the competitor is required to submit, where applicable, a separate envelope containing the prospectuses, notices or other technical documents.

ART. 33. –Bids containing variant offers

The project owner may provide for the submission of variant offers in the consultation regulations.

Where provision is made for the submission of variant offers, the consultation regulations must specify the minimum requirements that these bids must meet and the conditions and procedures for their examination and evaluation in relation to the basic solution provided for in the special specifications.

Unless otherwise stipulated in the consultation regulations, the submission of a variant offer is not subject to the submission of a bid for the basic solution.

The alternative bids submitted by the competitors are the subject of a separate envelope from the basic bid which they may have submitted.

The documents of the administrative file referred to in subparagraph 1 of A of I) and subparagraph 1 of II) of article 28 of this decree and the technical file are valid for both the basic solution and the variant offers.

If the competitor submits only the variant offer, the envelope containing this must be presented in accordance with the provisions of article 32 of this decree and marked « variant offer ».

ART. 34. – Submission of competitors' bids

Subject to the provisions of Article 135 of this decree on the submission and withdrawal of envelopes by electronic means, competitors' bids shall be either:

- 1 –Lodged, against receipt, at the project owner's office indicated in the tender notice
- 2 – Or sent, by registered letter with acknowledgement of receipt, to the project owner;
- 3 –Or handed over, immediately, to the president of the tendering Commission at the beginning of the session and before the opening of bids.

The deadline for receipt of bids expires on the date and at the time set by the tender notice for the bid opening session.

Envelopes submitted or received after the set date and time will not be accepted.

Upon receipt, the envelopes are recorded by the project owner in the order in which they were received, in the special register provided for in article 4 of this decree. The registration number and the date and time of arrival are recorded on the envelope delivered.

The envelopes must remain closed and kept in a safe place by the project owner until they are opened in accordance with the conditions set out in article 39 of this decree.

The envelope containing the documents produced by the competitor to whom it is intended to award the contract shall be submitted in accordance with the conditions set out in this article.

ART. 35. –Withdrawal of envelopes

Subject to the provisions of Article 135 of this decree on the submission and withdrawal of envelopes by electronic means, any envelope submitted or received may be withdrawn by the competitor prior to the day and time set for the bid opening session.

The withdrawal of envelopes is the subject of a written request signed by the competitor or his duly authorised representative and addressed to the project owner. The date and time of withdrawal are recorded by the project owner in the special register referred to in article 4 of this decree.

Competitors who have withdrawn their envelopes may, under the conditions set out in Article 34 above, submit new envelopes.

ART. 36. –Period of validity of bids

Competitors shall remain bound by their tenders for a period of sixty days, starting, depending on the case, from the date of the bid opening session or the date of signature of the contract by the successful tenderer in the case of a negotiated contract.

However, if the tendering commission considers that it is not in a position to make its choice during the period of validity of bids provided for in the previous paragraph, the project owner shall notify the competitors concerned, before the expiry of this period, by registered letter with acknowledgement of receipt, in order to ask them to extend the period of validity of bids by an additional period which he will set.

To this end, the project owner sets a deadline for the competitors concerned to submit their responses.

In this case:

- a) Competitors who have, in the same way, given their agreement to the request for an extension, before the deadline for response set by the project owner, remain committed for the agreed additional period ;
- b) Competitors who have not agreed to the request for an extension or who have not responded within the time limit set will be released from their commitments to the project owner and their provisional bail will be discharged no later than forty-eight hours after the deadline for response set by the project owner;
- c) If none of the competitors has agreed to the request for an extension or has not responded within the time limit set, the provisional bail will be released no later than forty-eight hours after the deadline for response set by the project owner. In this case, the procedure will be cancelled.

ART. 37. –Deposit and withdrawal of samples, prototypes, prospectuses, notices or other technical documents

The consultation regulations may provide for the submission of samples or prototypes and/or the presentation of prospectuses, notices or other technical documents.

1 –Competitors shall only be required to submit samples or prototypes if the nature of the services so requires and in the absence of any other means capable of describing and defining, in a clear and sufficiently precise manner, the technical characteristics and specifications of the service required.

Samples or prototypes are deposited and examined under the conditions set out in article 43 of this decree.

2 –Prospectuses, notices or other technical documents are placed in a separate envelope and deposited no later than the working day before the date on which the envelopes are to be opened, in return for an acknowledgement of receipt issued by the project owner, or delivered, immediately, to the president of the tendering Commission.

This envelope must be closed and clearly marked «prospectuses, notices or other technical documents».

Upon receipt, the project owner will register the envelopes marked «prospectuses, notices or other technical documents », in the order in which they were received, in the special register provided for in article 4 of this decree, indicating the registration number and the date and time of arrival.

Prospectuses, notices or other technical documents submitted or received may be withdrawn at the latest on the day of the bid opening session and before the time set for that purpose.

The withdrawal of prospectuses, notices or other technical documents is subject to a written request signed by the competitor or his duly authorised representative.

The date and time of withdrawal are recorded by the project owner in the special register. Competitors who have withdrawn their prospectuses, notices or other technical documents

may submit new prospectuses, notices or other technical documents under the conditions set out above.

Prospectuses, notices and other technical documents may be filed and collected electronically in accordance with the provisions of article 135 of this decree.

Prospectuses, notices and other technical documents are examined under the conditions set out in article 40 of this decree.

ART. 38. –Tendering Commission

The composition of the tendering commission is as follows:

1 –The tendering commission is chaired by the project owner. If the project owner is absent or unable to attend, the commission will be chaired by one of the persons appointed by him to replace him.

2 –For contracts awarded by the State, the commission is made up, in addition to the president, of the following members whose attendance is compulsory:

–Two representatives from the administration to which the project owner reports, at least one of whom reports to the department concerned by the service covered by the contract, appointed by the project owner ;

–A representative from the General Treasury of the Kingdom ;

–A representative from the Ministry of Finance, where the estimated amount of the contract exceeds fifty million (50,000,000) dirhams excluding tax.

3 –For contracts awarded by the public institutions and other legal entities governed by public law referred to in article 2 of this decree, the commission is made up, in addition to the president of the following members whose attendance is compulsory:

–Two representatives from the public institution or legal entity governed by public law to which the project owner reports, at least one of whom reports to the department concerned by the service covered by the contract, appointed by the project owner ;

–the representative of the Minister of Finance, in accordance with the legislation on State financial control applicable to the public institution concerned;

–the representative of the Minister of Finance or the representative of the General Treasury of the Kingdom, as the case may be, for the legal entity governed by public law ;

–The purchasing manager or his representative, if applicable;

–The financial manager or his representative if applicable.

The commission shall also include any member whose attendance is required under the laws and regulations governing the public institution or legal entity governed by public law concerned.

4 –For contracts awarded by local authorities, the commission is made up, in addition to the president, of the following members whose attendance is compulsory:

a) For regions and their groupings:

–The Director General of Services or the Director of Services, as the case may be, or his representative ;

–the head of the procurement service or his representative;

–The head of the department concerned by the service covered by the contract or his representative;

–The assigned public accountant or his representative.

b) For prefectures or provinces and their groupings :

- The Director General of Services or the Director of Services, as the case may be, or his representative ;
- The head of the contracts department or his representative ;
- The head of the department concerned by the service covered by the contract or his representative;
- The assigned public accountant or his representative.

c) For municipalities and inter-municipal cooperation institutions :

- The Director General of Services or the Director of Services, as the case may be, or his representative ;
- The head of the contracts department or his representative ;
- The head of the department concerned by the service covered by the contract or his representative;
- The assigned public accountant or his representative.

The composition of the tendering commission provided for in subparagraph 4 of this article may be modified by order of the Minister of the Interior.

5 –The commission may call on any person, expert or technician it deems useful to contribute to its work in an advisory capacity, or set up a sub-commission.

When the tendering commission decides to consult an expert or a technician, the president of the commission asks the project owner to invite the expert and/or technician concerned to take part in the work of the commission or sub-commission.

The sub-commission may not be composed exclusively of members of the tendering commission.

6 –The members of the commission are convened by the project owner. To this end, the latter is required to transmit to them, at least seven days before the date set for the bid opening session, the invitation to attend, together with the tender documents file including, where appropriate, any comments made by the said members and any information, clarifications or documents sent to the competitors.

ART. 39. –Opening of competitors' bids in public session

1 –The opening session for competitors' bids is public. It is held at the place, on the day and at the time provided for in the tender notice or in the circular letter. If this day is declared a public holiday or non-working day, the meeting will be held on the following working day at the same time.

The president of the commission opens the bid opening session.

2 –He invites the competitors present who have not submitted their bids to hand them over to him immediately.

He then invites competitors who have discovered that their bids are incomplete to submit the missing documents in a sealed envelope marked « missing documents » and finalises the list of envelopes received.

No envelopes or additional documents may be submitted or withdrawn after this formality has been completed.

The president of the commission then ensures that the members whose attendance is mandatory are present.

In cases where one or more members, whose attendance is compulsory, is/are absent, the president shall invite the members present at the bid opening session to initial at the same time the envelopes received, the flaps and the parts to which they are affixed. These envelopes must remain closed and kept in a safe place by the president until they are opened.

3 – In cases where one or more members, whose attendance is compulsory, is/are absent, the president postpones the bid opening session for forty-eight hours and informs the competitors and members of the commission present of the place, date and time scheduled for resuming the public bid opening session. He then asks the project owner to send a letter to the absent member(s). This letter must specify the place, date and time of the new bid opening session.

In cases where one or more members, whose attendance at the new session is compulsory, is/are absent, this one shall be validly held.

4 –Afterwards, or when the session resumes if it is postponed, the president will give the members of the commission the written document containing the estimated cost of the services drawn up in accordance with the provisions of Article 6 of this Decree. The members of the commission shall initial all the pages of this document, which must be kept by the president with the tender documents.

5 –The president announces, out loud, the references of the newspapers, the date of publication on the public procurement portal and, if applicable, the references of the other media in which the tender notice was published or of the circular letter for the restricted calls for tenders.

The president asks the members of the commission to express any reservations or observations they may have regarding any defects in the procedure.

When the president is satisfied that the reservations or observations made are well-founded, he ends the procedure, under his responsibility, and loudly informs the competitors present.

If, on the other hand, the president considers that the reservations or observations made are unfounded, he decides, under his responsibility, to continue the procedure and to record them in the minutes of the session.

6 –The president opens the competitors' bids and check the envelopes provided for in Article 32 of this Decree .

7 –He then opens the envelope marked « administrative and technical files » and announces aloud the documents contained in each file and draws up a list of the documents provided by each competitor.

The president announces the place, date and time of the new public session.

Once these formalities have been completed, the public session shall end and the public and competitors shall leave the room.

8 –The commission continues its work behind closed doors and examines the documents in the administrative file referred to in subparagraph 1) of A of I) of Article 28 of this decree and those of the technical file and excludes:

- a) Competitors who do not meet the requirements laid down in Article 27 of this Decree ;
- b) Competitors who have not complied with the requirements of paragraph 2) of Article 32 of this Decree with regard to the submission of their files;
- c) Competitors who have not submitted the required documents;
- d) Competitors who are represented by the same person in the same contract, whether it is a single contract or the same lot in an allotment contract ;
- e) Competitors who, where a provisional bail is required, have provided a receipt for the provisional bail or the certificate of the personal and joint bail in lieu thereof, which is not original or the subject of which does not comply with that of the call for tenders or the amount of which is less than the sum requested or which contains reservations or restrictions;
- f) Competitors whose financial and technical capacities are judged insufficient in the light of the criteria set out in the consultation regulations;
- g) Competitors whose workload plan exceeds that set by the consultation regulations.

9 –Where the commission finds material errors or discrepancies in the documents of the administrative file, it will admit the tender of the competitor concerned, subject to the introduction of the necessary rectifications in accordance with the provisions of article 43 of this decree.

10 –The commission draws up the list of competitors admitted and those excluded.

11 –The public session is resumed, the president reads the list of admitted competitors, without giving the reasons for the elimination of the unsuccessful competitors.

The president returns, against receipt, to the unsuccessful competitors present their files without opening the envelopes containing the technical bids, whether or not including variant bids, and the financial bids and invites them, where appropriate, to collect the prospectuses, notices and technical documents, with the exception of the documents in the administrative and technical files which were the cause of their exclusion, subject to the provisions of paragraph 3 of article 47 of this decree.

12 –When neither the technical offer, which may or may not include the variant offer, nor the submission of prospectuses, notices and technical documents are required, the commission shall continue its work and proceed with the opening and examination of the financial offers of the admitted competitors, in accordance with the conditions laid down in Articles 42 to 44 of this Decree.

13 –When the submission of prospectuses, notices or other technical documents and/or the submission of a technical offer including or not a variant offer are required :

- a) the president opens, as the case may be, the envelopes containing the prospectuses, notices or other technical documents and/or the envelopes containing the technical bids of the admitted competitors. He reads out the documents contained in each envelope;
- b) The members of the commission shall, at the same time, initial the envelopes containing the competitors' financial bids, the flaps and the parts to which they are affixed ;
- c) The envelopes containing the financial bids must remain closed and kept in a safe place by the president until they are opened, in accordance with the conditions laid down in Article 42 of this Decree;

d) The president sets, in concertation with the members of the commission, as the case may be, the date and time:

– Of the session at which the prospectuses, notices or other technical documents, if any, and/or the technical bid will be examined in accordance with the provisions of Articles 40 and 41 of this Decree ;

–Of the resumption of the new public session, which he communicates to the competitors and the public present.

14 –Once this formality has been completed, the public session is closed and the competitors and the public leave the room.

15 –At the end of this session, the president asks the project owner to post the date and time of the next public session on his premises.

ART. 40. –Examination of prospectuses, notices or other technical documents

1 –After examining the documents of administrative and technical file, the tendering Commission meets, behind closed doors, to examine, as appropriate, the prospectuses, notices or other technical documents of the admitted competitors.

2 –The tendering commission may, if necessary, before making its decision, consult any expert or technician or set up a sub-commission to assess the technical quality of the prospectuses, notices or other technical documents proposed with regard to the technical specifications set out in the special specifications book.

In this case, the president of the commission will ask the project owner to invite the expert and/or the technician concerned to take part, where appropriate, in the work of the commission or sub-commission.

The sub-commission may not be composed exclusively of members of the tendering commission.

The assessments of experts, technicians or members of the sub-commission must be objective, non-discriminatory, verifiable and duly motivated. Under no circumstances may these assessments concern the eligibility or not of competitors.

The conclusions reached by the experts, technicians or members of the sub-commission are recorded in reports which they draw up and sign under their own responsibility.

3 –The tendering commission may, if needed, request in writing from one or more competitors clarification on the prospectuses, notices or other technical documents that they have produced.

4 –The commission shall draw up a list of competitors whose prospectuses, notices or other technical documents comply with the required specifications and a list of competitors whose bids have been rejected because their prospectuses, notices or other technical documents do not comply with the required specifications, indicating the deficiencies noted.

The commission shall draw up minutes of its work, signed jointly by the president and the members. Where appropriate, the report of the expert, technician or sub-commission shall be attached to these minutes.

ART. 41. –Examination and evaluation of technical bids

After examining the documents of the administrative file, those in the technical file and, where applicable, the prospectuses, notices and other technical documents, the tendering commission will examine and evaluate the technical offers of the admitted competitors, behind closed doors.

It rejects competitors who have submitted technical offers that do not comply with the specifications required by the consultation regulations or who do not meet the criteria set out therein.

The commission may request in writing from one or more competitors clarification on their technical offers. These clarifications must be limited to the documents contained in these bids.

Before making its decision, the commission may consult any expert or technician or set up a sub-commission to analyse the technical bids, in accordance with the terms and conditions set out in article 40 of this decree.

The commission will draw up a list of successful competitors following the evaluation of the technical bids.

ART. 42. –Opening of the envelopes containing the financial offers

1 –The public session is resumed:

–Following the examination of the documents of the administrative and technical files, in the case provided for in paragraph 12 of article 39 of this decree ;

–On the date and at the time announced by the president of the commission in the case provided for in c) of paragraph 13 of the same article.

2 –When the public session resumes, the president of the commission reads out the list of eligible competitors and the list of unsuccessful competitors, without stating the reasons for their elimination, and returns, against receipt, to the unsuccessful competitors present their files without opening the envelopes containing the financial offers, subject to the provisions of paragraph 3 of Article 47 of this Decree.

The president then opens the envelopes marked « financial offer » of the admitted competitors and reads out the amounts indicated on the acts of commitment and the itemised estimates.

3 –The members of the commission shall initial the acts of commitment and, as appropriate, the price schedules, the itemised estimates, the price schedules -itemised estimates, the global price schedules, the breakdown of the global amount and, where applicable, the supply price schedules.

4 –Once this formality has been completed, the public session is closed . The competitors and the public leave the room.

ART. 43. –Evaluation of competitors' financial offers and selection of the most economically advantageous bid

I) Evaluation of competitors' financial offers behind closed doors:

1 –The tendering commission continues its work behind closed doors. It may consult any expert or technician in order to enlighten it on particular points of the financial bids submitted by admitted competitors or, if necessary, set up a sub-commission to analyse these bids.

2 –The commission excludes competitors whose financial offers:

- Do not comply with the subject of the contract ;
- Are not signed;
- Are signed by a person not authorised to bind them with regard to the document(s) justifying the powers conferred;
- Express restrictions or reservations;
- Present differences in the price wording, the unit of account or the quantities compared to the data provided in the technical description, in the price schedule and the itemised estimate.

3 –The commission then verifies the arithmetic operations of the financial bids submitted by the selected competitors, taking into account any discounts granted in these bids. Where necessary, it corrects any calculation errors and re-establishes the exact amounts of the bids concerned.

4 –Once this formality has been completed, the commission will reject, in accordance with the terms and conditions set out in article 44 below, any financial bids deemed excessive or abnormally low with regard to the amount of the estimate drawn up by the project owner.

5 –The commission then determines the reference price of the competitors' financial bids in accordance with the provisions of article 44 below.

II) Choice of the most economically advantageous offer:

1 –The commission continues its work and ranks the bids submitted by the selected competitors on the basis of the reference price so determined, with a view to proposing the most economically advantageous bid to the project owner.

For the purposes of this Decree, « the most economically advantageous offer » means :

a) The most competitive offer in relation to the reference price, for works contracts and service contracts other than studies.

However, for contracts covering security, cleaning of administrative buildings or maintenance of green areas, the most competitive offer means the lowest proposed rate of increase applied to the estimate of the cost of the services drawn up by the project owner, subject to the provisions of a) of paragraph 3 of Article 20 of this Decree;

b) For supply contracts, the most competitive financial offer in relation to the reference price, taking account, where appropriate, of the combination of the acquisition price and the monetary evaluation of the cost of use and/or maintenance over a specified period in accordance with the conditions laid down in Article 21 of this Decree;

c) For service contracts relating to the provision of studies, the most competitive financial offer is that with the best technical-financial score under the conditions set out in article 144 of this decree.

2 –If several bids judged to be economically most advantageous are deemed to be equivalent, all elements considered, the commission will draw lots to decide between the competitors concerned.

However:

- When one of the competitors concerned is a cooperative, a union of cooperatives or a self-employed entrepreneur, preference is given to the offer submitted by the latter;
- When two or more of the competitors concerned are a cooperative, a union of cooperatives or a self-employed entrepreneur, preference is given to the offers submitted by them. In this case, the commission will draw lots to decide between them.

3 –The commission then checks that the most economically advantageous offer does not include one or more excessive or abnormally low main unit prices as set out in article 44 of this decree.

4 –By registered letter with acknowledgement of receipt, the commission shall invite the competitor who has submitted the most economically advantageous offer to :

- Produce, as the case may be, the documents of the administrative file referred to in subparagraph 2) of paragraph A of I) or in subparagraph 2) of II) of article 28 of this decree ;
- Confirm the corrections of material errors found, if applicable;
- Address any discrepancies noted between the various documents in his administrative file, where applicable;
- Produce the samples or prototypes required by the consultation regulations, where applicable;
- Justify the main unit price(s) deemed abnormally low or excessive in accordance with the provisions of article 44 of this decree.

To this end, the Commission shall set a time limit which may not be less than seven days from the date of receipt of the letter referred to in this paragraph.

5 –The president of the commission shall suspend the session and set the date and time for the resumption of its work behind closed doors.

6 –The response elements from the competitor to whom it is intended to award the contract must be submitted in a sealed envelope, accompanied, where appropriate, by the samples or prototypes required.

This envelope must clearly include the following information:

- the name and address of the competitor;
- the subject of the contract and, where applicable, an indication of the lot in the case of an allotment contract;
- the warning that «the envelope must only be opened by the president of the tendering Commission» and clearly marked «supplementary information to the file and response elements ».

This envelope must either be lodged, against receipt, at the project owner's office indicated in the letter of invitation, or sent by registered letter with acknowledgement of receipt.

Samples or prototypes, when required, must be deposited, against receipt, in the office of the project owner indicated in the letter of invitation.

The deposit of the above-mentioned envelope, samples or prototypes is recorded in the special register provided for in article 4 of this decree.

7 –The commission meets at the place, on the day and at the time set. However, the president may invite the members of the commission to resume its work as soon as a response from the competitor concerned has been received.

8 –The commission will check the existence of the letter used to invite the competitor concerned and will check the documents and the response received and, where applicable, the samples or prototypes.

It then examines the documents and the response received and, where applicable, the samples or prototypes.

It may, where appropriate, consult any expert, technician or laboratory before making its decision, or set up a sub-commission to assess the technical quality of the samples or prototypes proposed.

The commission will also examine the competitor's justifications for excessive or abnormally low main unit prices, in accordance with the procedures set out in article 44 below.

9 –At the end of this examination, the commission decides :

A. Whether to propose to the project owner to accept the offer of the competitor concerned, when it appears, depending on the case, that :

- a) The documents submitted to supplement the administrative file meet the conditions of the second paragraph of article 28 of this decree ;
- b) The corrections requested have been confirmed;
- c) The discrepancies noted have been addressed;
- d) The justifications for the excessive or abnormally low main unit price(s) are convincing;
- e) The samples or prototypes produced comply with the characteristics required in the special specifications book.

B. Or to disqualify the competitor concerned, when the latter :

- a) Does not reply within the time limit given to him;
- b) Does not produce the required documents or produces nonconforming documents;
- c) Does not produce samples or prototypes, where applicable;
- d) Does not confirm the rectification of any material errors found;
- e) Fails to rectify discrepancies between the various documents in his file ;
- f) Provides unconvincing justifications for the main unit price(s) deemed excessive or abnormally low;
- g) Produces samples or prototypes that do not comply with the characteristics required by the special specifications books, where applicable.

10 - In the event that the competitor having submitted the most economically advantageous offer is excluded in accordance with the provisions of B) of paragraph 9 above, the commission shall invite, under the conditions provided for in paragraph 4 of this article, the competitor whose offer is ranked second.

It shall examine the documents and the response received and, where appropriate, the samples or prototypes and shall decide whether to accept or reject the competitor in accordance with the conditions stated above.

11 - If the commission does not retain the competitor concerned, it will invite the competitor whose offer is ranked next and will examine the documents and the response received and, where applicable, the samples or prototypes under the conditions set out above, until the procedure has been completed or the call for tenders has been declared unsuccessful.

ART. 44. –Determination of reference price, excessive offer and abnormally low offer

A. Reference price:

After ruling out offers deemed excessive and abnormally low, the commission shall determine the reference price.

The reference price of the offers is equal to the arithmetic average resulting from the estimate of the cost of the services established by the project owner and the average of the financial offers submitted by the selected competitors.

This reference price is calculated according to the following formula:

$$P = \frac{\left(E + \frac{\text{Sum of financial offers}}{\text{Number of financial offers}} \right)}{2}$$

Where:

- P: Reference price;
- E: Estimated cost of services established by the project owner;

The commission then ranks the competitors' bids in accordance with the provisions of article 43 above in relation to the reference price so determined.

The most competitive offer, to be proposed to the project owner, is the one that is closest to the default reference price.

If there are no offers below the reference price, the best offer is the one that is closest in excess to this price.

B. Excessive offer and abnormally low offer:

1 –Excessive offer:

An offer is deemed to be excessive if it is more than twenty percent (20%) higher than the estimated cost of services drawn up by the project owner for works, supply and service contracts other than those relating to studies.

2 –Abnormally low offer:

An offer is deemed to be abnormally low when it is lower by more than:

- Twenty percent (20%) compared to the estimate of the cost of services drawn up by the project owner for works contracts ;
- Twenty-five percent (25%) compared to the estimate of the cost of services drawn up by the project owner for supply and service contracts other than those relating to studies.

C. Excessive or abnormally low main unit prices :

Where necessary, the special specifications book may include a clause on the main unit prices.

The procedures for assessing the main unit price(s) are as follows:

–A main unit price stated in the price schedule and/or the itemised estimate of the most advantageous offer is deemed to be excessive when it is more than twenty percent (20%) higher than the corresponding price listed in the project owner's itemised estimate for works, supply and service contracts other than those relating to studies;

–A main unit price stated in the price schedule and/or the itemised estimate of the most advantageous offer is deemed to be abnormally low when it is lower by more than twenty percent (20%) compared to the corresponding price listed in the project owner's itemised estimate for works contracts or by more than twenty-five percent (25%) lower for supply and service contracts other than studies.

Where one or more of the main unit prices listed in the price schedule and/or the itemised estimate of the most advantageous offer are found to be excessive or abnormally low in relation to the criteria set out in this paragraph, the tendering commission will ask the competitor concerned, in writing, to justify this price or these prices.

The justifications that can be taken into account concern, in particular, the following aspects:

- the savings generated by the methods of manufacturing the products, the arrangements for providing the services and the construction processes ;
- the exceptionally favourable nature of the execution conditions from which the competitor may benefit;
- the originality of the project or offer;
- The rational use of resources.

Before deciding whether to accept or reject an offer containing one or more excessive or abnormally low main unit prices, the commission may set up a sub- commission to examine the explanations provided by the competitor concerned.

At the end of its work, the sub-commission draws up a report which the members sign under their responsibility

In light of this report, the tendering commission decides whether to accept or reject the bid of the competitor concerned.

ART. 45. –Unsuccessful call for tenders

The commission declares the call for tenders unsuccessful if:

- a) No tender has been submitted or lodged;
- b) No competitor has been selected after examination of the administrative and technical files;
- c) No competitor has been selected after examination of the technical offers or the prospectuses, notices and other technical documents;
- d) No competitor has been selected following examination of the financial offers;
- e) No competitor has been selected following examination of the samples or prototypes;
- f) None of the offers is deemed acceptable in the light of the conditions and criteria set out in the consultation regulations.

The declaration of the call for tenders as being unsuccessful for the reason set out in a) above may only justify recourse to the negotiated procedure if the call for tenders has been declared unsuccessful after having been issued a second time.

ART. 46. –Minutes of the tender examination session

The tendering commission draws up, immediately, minutes of each of its meetings. These minutes, which are neither made public nor communicated to the competitors, mention where applicable the estimated cost of the services drawn up by the project owner, mention any observations made by the members of the commission during the tender examination process and state their points of view on these observations.

Similarly, the minutes shall state the reasons for excluding the excluded competitors and the criteria on which the commission has based its proposal to the project owner to select the tender he judges to be economically the most advantageous.

The minutes are immediately signed by the president and the members of the commission.

Any reports drawn up by the sub-commission, the expert, the technician or the laboratory, as appropriate, are attached to the minutes of the tender examination session.

An extract from the minutes is published on the public procurement portal and posted within the premises of the project owner's organisation within twenty-four hours following the date of completion of the commission's work. This extract must be posted for at least fifteen days.

ART. 47. –Final results of the call for tenders

The project owner shall inform the successful tenderer of the acceptance of his tender by registered letter with acknowledgement of receipt or by any other means capable of providing a certain date, no later than the third day following the date on which the tendering commission completes its work.

Within the same time limit, he shall inform the excluded competitors by registered letter with acknowledgement of receipt, giving the reasons for the rejection of their tenders. This letter shall be accompanied by the documents contained in their files.

However, the documents that led to the disqualification of competitors are kept by the project owner for a minimum period of five years, with the exception of the original receipt for the provisional bail or the certificate of the personal and joint bail in lieu thereof, which is returned to the disqualified competitors within forty-eight hours from the date of dispatch of the letter referred to in the second paragraph of this article.

Similarly, the samples and prototypes submitted by rejected competitors will be returned to them after the expiry of a period of fifteen days from the date of receipt of the aforementioned letter.

No competitor may claim compensation if his tender has not been accepted.

The choice made by the tendering commission may not, under any circumstances, be changed by the project owner or the competent authority.

ART. 48. –Cancellation of the call for tenders

1 –The competent authority may, at any stage of the procedure and before notification of approval of the contract, cancel the call for tenders.

This cancellation occurs in one of the following cases:

- a) When the economic or technical data relating to the services covered by the call for tenders have been fundamentally changed for reasons beyond the control of the project owner ;
- b) When it turns out that there are exceptional circumstances which make normal execution of the contract impossible;
- c) When the amount of the successful tender exceeds the allocated budget appropriations.

Cancellation of the call for tenders for the reasons set out above may not, under any circumstances, justify the launch of a new procedure under the same conditions of the initial call for tenders, as long as the reasons for the cancellation of that call for tenders persist.

2 –The competent authority shall, under the same conditions, cancel the call for tenders in one of the following cases:

- a) Where a procedural defect has been detected ;
- b) When it turns out that the complaint lodged by the competitor is well-founded, subject to compliance with the provisions of Article 163 of this Decree;
- c) When none of the competitors has agreed to maintain his bid during the additional period proposed by the project owner in accordance with the provisions of paragraph c) of Article 36 of this Decree;
- d) When approval of the contract is not notified to the successful tenderer within the time limit laid down in Article 143 of this Decree;
- e) When the successful tenderer refuses to sign the contract;
- f) When the successful tenderer refuses to receive the contract approval notified to him within the period provided for in article 143 of this decree.

3 –The cancellation of the call for tenders shall be the subject of a reasoned decision signed by the competent authority.

This decision is published on the public procurement portal.

4 –The project owner informs the competitors in writing of the cancellation of the call for tenders, giving them the reasons for the cancellation, and sends a copy of the cancellation decision to the members of the tendering commission.

5 –The cancellation of a call for tenders does not justify recourse to the negotiated procedure.

6 –In the event of cancellation of a call for tenders under the conditions set out above, competitors or the successful tenderer may not claim compensation.

Subsection 2. - Call for tenders with pre-selection

ART. 49. –Principles and procedures

Contracts may be awarded by a call for tenders with pre-selection, when the services covered by the contract require, by reason of their complexity or particular nature, a prior selection of competitors, in a first stage, before inviting, in a second stage, the admitted competitors to submit their offers.

The call for tenders with pre-selection is based on the following principles:

- a) A call for competition;
- b) Opening of bids in public session;

- c) Examination of the bids by a tendering commission with pre-selection;
- d) Selection by the tendering commission with pre-selection of the most economically advantageous tender to be proposed to the project owner;
- e) The obligation for the project owner to inform the members of the tendering commission with pre-selection of the estimated cost of the services.

ART. 50. –Publication of the call for tenders with pre-selection

Subject to the provisions of Article 134 of this Decree, the call for tenders with pre-selection is published in accordance with the provisions of the first and second sub-paragraphs of paragraph 2 of I) of Article 23 of this Decree.

However, this notice must be published at least fifteen days before the date set for the admission session.

The notice of the call for tenders with pre-selection shall specify :

- a) The subject of the call for tenders with pre-selection, indicating the place where the services are to be performed, the municipality, province or prefecture and the region concerned ;
- b) The project owner issuing the call for tenders with pre-selection;
- c) The office(s) and address of the project owner where the tender documents with pre-selection may be collected;
- d) The office(s) and address of the project owner where bids may be submitted or addressed;
- e) The email address of the public procurement portal and, where applicable, that of the website or websites used by the project owner to publish the tender notice with pre-selection;
- f) The place, day and time fixed for holding the admission session, specifying that competitors can submit their bids directly to the president of the tendering commission at the opening of the session;
- g) The supporting documents provided for by the consultation regulations that any competitor must provide.

ART. 51. –Consultation regulations for calls for tenders with pre-selection

All calls for tenders with pre-selection are subject to consultation regulations drawn up by the project owner.

These consultation regulations must, particularly, include the following information:

I) As for the pre-selection stage

1 –The list of documents to be provided by competitors as provided for in paragraphs 1), of A and B of II) of Article 53 of this Decree;

2 –The criteria for pre-selecting competitors. These criteria, which vary according to the nature of the services to be provided, may take into account, in particular, the following :

- The guarantees provided by competitors and their legal, technical and financial capacities ;
- Competitors' professional references, if any.

These criteria are assessed on the basis of the documents contained in the administrative and technical files.

II) As for the tender evaluation stage:

1 –The list of documents to be provided by admitted competitors as provided for in paragraph 2 of A of II) of Article 53 of this decree.

2 –The criteria for evaluating the competitors' bids and the award of the contract. These criteria must be directly related to the subject of the contract to be concluded, be objective, non-discriminatory and not disproportionate to the consistency of the services to be provided.

The criteria for evaluating the competitors' bids may be subject to weighting coefficients which must not, under any circumstances, have the effect of restricting competition;

The criteria for evaluating the competitors' bids and awarding the contract vary, depending on the nature of the services to be provided, as follows:

a) With regard to works contracts and where the submission of a technical offer is required, the criteria for evaluating the competitors' bids shall take into account, in particular :

- The human resources and material means to be assigned to the site ;
- the specific experience and profile of the staff with regard to the nature of the services;
- The extent to which craftsmen and maalmens (master craftsmen) are used for services relating to the preservation of medinas and the restoration of traditional, historic and ancient works;
- The proposed completion schedule ;
- The construction methods and processes;
- The aesthetic and functional qualities of the service;
- Performances related to environmental protection and sustainable development;
- The development of renewable energies and energy efficiency;
- Conservation of water resources;
- The extent to which products of Moroccan origin are used;

The technical score is determined on the basis of the score awarded to each criterion of the technical offer. An eligibility threshold for competitors is set in the consultation regulations.

For the award of the contract, the only criterion to be taken into account, after the admission of competitors, is the most economically advantageous bid as defined in article 43 of this decree.

b) With regard to supply contracts and where the submission of a technical offer is required, the criteria for evaluating the competitors' bids shall take into account, in particular :

- The functional qualities of the supplies;
- Guarantees provided by competitors;
- After-sales service;
- The human resources and material means to be mobilised to carry out the service;
- Performances related to environmental protection and sustainable development;
- the development of renewable energies and energy efficiency;
- Conservation of water resources;
- The use of Moroccan craft products, where appropriate.

The technical score is determined on the basis of the score awarded to each criterion of the technical offer. An eligibility threshold for competitors is set in the consultation regulations.

For the award of the contract, the only criterion to be taken into account, after the admission of competitors, is the most economically advantageous bid as defined in article 43 of this decree.

c) With regard to service contracts and where the submission of a technical offer is required, the criteria for evaluating the competitors' bids shall take into account, in particular, the following :

- the proposed methodology;
- the human resources and material means to be mobilised to carry out the service;
- The timetable for allocating human resources ;
- The innovative nature of the bid;
- The quality of the technical assistance;
- The rate of transfer of skills and knowledge;
- Guarantees provided by competitors;
- The proposed implementation schedule;
- The specific experience and profile of the staff with regard to the nature of the services;
- Performances related to environmental protection and sustainable development;
- The development of renewable energies and energy efficiency;
- Conservation of water resources;
- The rate of use of Moroccan experts by competitors not established in Morocco for contracts relating to studies, including contracts for the design and development of information systems.

The technical score is determined on the basis of the score awarded to each criterion of the technical offer. An eligibility threshold for competitors is set in the consultation regulations.

For the award of the contract :

- When the contract concerns services other than studies, the only award criterion to be taken into consideration, after admission of the competitors, is the most economically advantageous tender as defined in Article 43 of this Decree;
- When the contract concerns study services, the only award criterion to be taken into consideration, after admission of the competitors, is the most economically advantageous tender as defined in article 144 of this decree.

III) The convertible currency or currencies in which the price of the financial offer must be expressed, where the competitor is not established in Morocco.

For the purposes of evaluating and comparing bids, the amounts of bids expressed in foreign currencies must be converted into dirhams.

This conversion is made on the basis of the reference exchange rate of the dirham in force, given by Bank Al-Maghrib, on the first working day of the week preceding that of the bid opening day;

IV) The language(s) in which the documents contained in the files and the bids submitted by the competitors must be drawn up;

V) The consultation regulations shall provide, where appropriate, for:

- the maximum number of lots that may be awarded to the same competitor and the method of awarding lots in accordance with the provisions of Article 10 of this Decree ;
- The terms and conditions under which the variants are reviewed and evaluated with respect to the basic solution provided for in the special specifications book, in accordance with the provisions of Article 33 of this Decree;
- The number, designation and estimated amount of the main unit price(s).

The consultation regulations must be signed by the project owner before the contract award procedure is launched.

ART. 52. –Pre-selection tender documents

1 –Prior to the launch of the procedure, any call for tenders with pre-selection shall be the subject of a file drawn up by the project owner which shall include :

A. For the pre-selection stage:

- a) A copy of the pre-selection notice;
- b) A note presenting the project, which must indicate, in particular, the subject of the contract, the context of the project, the place of performance, the nature and summary description of the service to be provided;
- c) The model of the application for admission;
- d) The model of the declaration of honor;
- e) The model of the workload plan declaration;
- f) The consultation regulations.

B. For the tender evaluation stage:

- a) The special specifications book;
- b) The plans and technical documents, if applicable;
- c) The model of the act of commitment;
- d) Models of the price schedule and the itemised estimate or the model of the price schedule - itemised estimate in the case of a unit price contract;
- e) For global price contracts, the model of the global price schedule and the breakdown of the global amount by item with or without indication of the lump-sum quantities;
- f) The model of the supply price schedule, where this is provided for in the special specifications book;
- g) The model of the detailed breakdown of prices, where applicable;

2 –The pre-selection tender documents provided for in paragraph 1) above shall be sent to the members of the pre-selection tendering commission at least six days before the notice is sent for publication.

The members of the pre-selection tendering commission have a period of six days from the date of receipt of the pre-selection tender documents to send any comments they may have to the project owner.

3 –The pre-selection call for tenders notice is published on the public procurement portal and in at least two nationally circulated newspapers, chosen by the project owner, one of which is in Arabic. It is published in the language of publication of each of the newspapers.

At the same time, this notice may be brought to the attention of potential competitors and, where appropriate, professional bodies, by inserting it in specialised publications or by any other means of advertising.

4 –The pre-selection tender documents provided for in subparagraph A) of paragraph 1) above must be available prior to publication of the notice. It is made available to competitors from the time of publication of the call for tenders with preselection until the deadline for the submission of competitors' admission applications.

The pre-selection tender documents in subparagraph B) of paragraph 1) above, with the exception of plans and technical documents, is published on the public procurement portal.

5 –The pre-selection tender documents file is provided free of charge to competitors, with the exception of plans and technical documents, the reproduction of which requires specific technical equipment. The fee for providing these plans and technical documents is set by order of the Minister of Finance.

The pre-selection tender documents can be downloaded from the public procurement portal.

6 –The names of competitors who have withdrawn or downloaded the pre-selection tender documents shall be entered in the special register, with an indication of the date and time of withdrawal or downloading.

7 –If, for any reason whatsoever, the pre-selection tender documents file is not delivered to the competitor or his representative who has come to the place indicated in the pre-selection tender notice, the project owner will issue him, on the same day, a certificate stating the reason why the tender documents file has not been delivered and indicating the day on which this file is to be collected so that the competitor can prepare his file. A copy of this certificate is kept in the contract file.

If the pre-selection tender documents file has not been delivered by the date indicated in the certificate issued to him, the competitor may refer the matter, by any means capable of giving a certain date, to the hierarchical authority to which the project owner concerned reports, in the case of the State, public institutions and other legal entities governed by public law as referred to in article 2 of this decree or the governor of the prefecture or province or the wali of the region, as the case may be, in the case of local authorities, in order to explain the circumstances of his request in order to obtain the aforementioned file and the response he has received.

After ascertaining that the request is well-founded, the authority seized shall invite the project owner in writing to immediately provide the applicant with the pre-selection tender documents file and, if necessary, to postpone the date on which the bids are to be opened for a period at least equivalent to that between the date on which the request is made and the date on which the documents are provided to the applicant.

The notice of postponement is published on the public procurement portal and in two nationally circulated newspapers chosen by the project owner, one of which is in Arabic.

8 –Exceptionally, the project owner may make changes to the pre-selection tender documents without changing the subject of the contract. In this case, these changes are communicated to all competitors who have withdrawn or downloaded the tender documents file and are included in the tender documents files made available to the other competitors.

These changes may be made at any time during the initial deadline for advertising and no later than seven days before the date scheduled for holding the competitor admission session.

After this deadline, the project owner must postpone the date of the admission session by means of a corrective notice.

Where the changes made to the pre-selection tender documents file require the publication of a corrective notice, this shall be published in accordance with the provisions of the first subparagraph of the second paragraph of I) of Article 23 of this Decree. In this case, the admission session may only be held after the expiration of a minimum period of ten days.

This period runs from the day after the date of publication of the corrective notice in the latest publication media, without the date of the new session being earlier than that provided for in the initial advertising notice.

Competitors who have withdrawn or downloaded the pre-selection tender documents file must be informed of the above changes and of the new date of the admission session, if applicable.

The corrective notice is issued in one of the following cases:

- To correct manifest errors in the published notice;
- When the project owner finds, after publication of the notice that the period running between the date of publication and the admission session does not comply with the required deadline.

ART. 53. –Conditions required from competitors and justification of capacities and qualities

I) In the case of a call for tenders with preselection, the conditions laid down in Article 27 of this Decree shall apply to competitors.

II) Each competitor must submit an administrative file and a technical file.

A. The administrative file includes:

1 –For each competitor at the admission stage:

a) The document or documents justifying the powers conferred on the person acting on behalf of the competitor. These documents vary according to the legal form of the competitor:

–In the case of a self-employed entrepreneur or an individual acting on his own behalf, no documentation is required;

–In the case of a competitor's representative, he or she must submit, as appropriate :

- A certified copy of the legalized power of attorney, when acting on behalf of an individual ;
- An extract from the company's statutes and/or a certified copy of the minutes of the competent body granting him authority to act on behalf of the company;
- The act through which the authorised person delegates his power to a third person, if applicable.

–In the case of a cooperative or a union of cooperatives, the document or documents justifying the powers conferred on the person acting on behalf of the cooperative or the union of cooperatives.

b) The declaration of honor;

c) The application for admission;

d) The founding agreement of the group provided for in article 150 of this decree or its certified copy, when the competitor is a group;

e) A copy of the text authorising him to carry out the tasks relating to the services covered by the contract, when the competitor is a public institution.

2 –For competitors admitted to the tender evaluation stage, the original receipt for the provisional bail or the certificate of the personal and joint bail in lieu thereof, where applicable;

3 –For the competitor to whom it is planned to award the contract

a) A certificate or a certified copy of the original certificate issued less than one year by the tax collector of the place of taxation, certifying that the competitor is in a regular tax situation or, in the absence of payment that he has lodged the guarantees provided for in article 27 of this decree.

This certificate must state the activity in respect of which the competitor is taxed.

As for public institutions, the above-mentioned certificate is only required from those subject to tax;

- b) A certificate or a certified copy of the original issued less than one year by the National Social Security Fund or by any other social security organization certifying that the competitor is in a regular situation with the organization concerned;
- c) A copy of the certificate of registration in the trade register (model 9) for persons subject to compulsory registration in accordance with the legislation in force, a copy of the certificate of registration in the local register for cooperatives and a copy of the certificate of registration in the national register of self-employed entrepreneurs for self-employed entrepreneurs;
- d) Supporting documents of the nationality of the company and its directors in the case of contracts awarded for national defence or public security purposes, where required by the project owner;
- e) The equivalent of the certificates referred to in paragraphs a), b) and c) above, issued by the administrations or competent bodies of their countries of origin or provenance, for competitors not established in Morocco.

If the competent administrations or bodies in their country of origin or provenance fail to issue these documents, they are replaced by a certificate issued by a judicial or administrative authority in the country of origin or provenance certifying that the aforementioned documents have not been produced.

The date on which the documents referred to in a) and b) above are submitted to the project owner will be used as the basis for assessing their validity.

B. The technical file includes:

- a) A note indicating the human and technical resources of the competitor and mentioning, where appropriate, the place, date, nature and importance of the services which he has carried out or in the performance of which he has participated, with details of the quality of his participation;
- b) The certificates or their certified copies issued by project owners, whether public or private, or by men of art under whose supervision the competitor has carried out these services, or by contract holders for subcontracted services.

Each certificate notably specifies the nature of the work, the amount and the year in which it was carried out, the name and position of the signatory and his assessment.

For the restoration of traditional, historical and ancient works, the above-mentioned reference certificates must mention that the work carried out relates to buildings classified in accordance with the provisions of law no. 22-80.

Under no circumstances may the project owner require reference certificates that are disproportionate to the nature and consistency of the services and the amount of the contract;

- c) A statement of the competitor's workload plan, where this is provided for in the pre-selection regulations ;
- d) The document(s) justifying the competitor's financial capabilities, where applicable;
- e) Where a qualification and classification system is provided for the contracts concerned by the services, the certificate issued under this system replaces the documents provided for in subparagraphs a), b) and d) of paragraph B of II) of this article;

- f) Where an approval system is provided for the contracts concerned by the services, the certificate issued under that system replaces the documents referred to in subparagraphs a), b) and d) of paragraph B of II) of this article;
- g) Competitors who are not established in Morocco are required to produce the technical file documents referred to in sub-paragraphs a), b), c) and d) of paragraph B of II) of this article.

ART. 54. –Content, presentation, submission and withdrawal of admission files

Each competitor's admission file shall include an administrative file and a technical file.

a) The administrative file includes:

- The document or documents justifying the powers conferred on the person acting on behalf of the competitor, as provided for in Article 53 of this Decree;
- The declaration of honor;
- The application for admission;
- The founding agreement of the group provided for in article 150 of this decree or its certified copy, when the competitor is a group;
- A copy of the text authorising him to carry out the tasks relating to the services covered by the contract, when the competitor is a public institution.

b) The technical file includes the documents provided for in paragraph B of II) of Article 53 above.

The documents of the admission file provided for in a) and b) above shall be placed in an envelope which shall be deposited or delivered in accordance with the provisions of article 34 of this decree.

This envelope must be sealed and bear the following details:

- the name and address of the competitor;
- the subject of the call for tenders with pre-selection;
- the date and time of the admission session;
- the warning that « the envelope must only be opened by the president of the pre-selection tendering commission at the admission session ».

Competitors who have submitted bids may withdraw them in accordance with the provisions of Article 35 of this Decree.

ART. 55. –Pre-selection tendering commission

The composition of the pre-selection tendering commission shall be determined in accordance with the provisions of article 38 of this decree.

ART. 56. –Admission session

1 –The admission session is public. It is held at the place, on the day and at the time specified in the notice of the call for tenders with pre-selection. If this day is declared a public holiday or non-working day, the meeting will be held on the next working day at the same time.

The president of the pre-selection tendering commission opens the admission session.

2 –He invites the competitors present who have not submitted their bids to hand them over to him immediately.

He then invites competitors who have discovered that their bids are incomplete to submit the missing documents in a sealed envelope marked « missing documents » and finalises the list of envelopes received.

No envelopes or additional documents may be submitted or withdrawn after this formality has been completed.

The president of the commission then ensures that the members whose attendance is mandatory are present.

In cases where one or more members, whose attendance is compulsory, is/are absent, the president shall invite the members present at the admission session to initial at the same time the envelopes received, the flaps and the parts to which they are affixed. These envelopes must remain closed and kept in a safe place by the president until they are opened.

3 –In cases where one or more members, whose attendance is compulsory, is/are absent, the president postpones the admission session for forty-eight hours and informs the competitors and members of the commission present of the place, date and time scheduled for resuming this session. He then asks the project owner to send a letter to the absent member(s). This letter must specify the place, date and time of the new admission session.

In cases where one or more members, whose attendance at the new session is compulsory, is/are absent, this one shall be validly held.

4 –Afterwards, or when the session resumes if it is postponed, the president announces, out loud, the references of the newspapers, the date of publication on the public procurement portal and, where applicable, the references of the other media in which the notice of the call for tenders with pre-selection was published.

The president asks the members of the commission to express any reservations or observations they may have regarding any defects in the procedure.

When the president is satisfied that the reservations or observations made are well-founded, he ends the procedure, under his responsibility, and loudly informs the competitors.

If, on the other hand, the president considers that the reservations or observations made are unfounded, he decides, under his responsibility, to continue the procedure and to record them in the minutes of the session.

5 –The president opens the competitors' bids, checks that the files provided for in article 54 above are enclosed and announces, aloud, the documents contained in each file and draws up a list of the documents provided by each competitor.

6 –Once this formality has been completed, the public session shall end and the public and competitors shall leave the room.

7 –The commission meets behind closed doors and examines the documents in the administrative file and those in the technical file as referred to in article 54 above and excludes:

- a) Competitors who do not meet the requirements laid down in Article 27 of this Decree ;
- b) Competitors who have not submitted the required documents;

c) Competitors whose financial and technical capacities are judged insufficient in the light of the criteria set out in the consultation regulations.

The commission draws up the list of competitors admitted, including those admitted subject to rectification of any discrepancies noted in the documents of the administrative file.

ART. 57. –Minutes of the admission session

The pre-selection tendering commission draws up, immediately, minutes of admission session. These minutes, which are neither made public nor communicated to the competitors, mention if applicable any observations made by the members of the commission during the admission session and state the commission's point of view on these observations. Similarly, the minutes shall state the reasons for eliminating the excluded competitors and the list of admitted competitors.

The minutes are immediately signed by the president and the members of the commission.

An extract from the minutes is published on the public procurement portal and posted within the premises of the project owner's organisation within twenty-four hours following the date of completion of the commission's work. This extract must be posted for at least fifteen days.

ART. 58. –Final results of the admission session

The project owner shall inform the excluded competitors of their exclusion by registered letter with acknowledgement of receipt, within a period not exceeding five days following the date on which the pre-selection tendering commission completes its work.

He shall inform the admitted competitors within the same time limit and in the same manner.

The letter of admission should be addressed to the admitted competitors at least thirty days before the date set for the bid opening session. This letter must indicate the place where the bids are to be received, the date, time and place of the bid-opening session, the estimate of the cost of the services drawn up by the project owner and, where applicable, the date scheduled for the meeting or site visit, which must take place no later than five days before the date scheduled for the bid-opening session.

By means of this letter, admitted competitors are invited to withdraw or download the pre-selection tender documents file and to submit their tenders accompanied by the initialled and signed special specifications book and, where applicable, the original receipt for the provisional bail or the certificate of the personal and joint bail in lieu thereof.

Where the submission of prospectuses, notices or other technical documents and/or a technical offer including or not including a variant offer is required, the letter referred to in the first subparagraph of this article sets the date and place of such submission in accordance with the provisions of article 37 of this decree.

If a competitor considers that the time limit set by the letter of admission is not sufficient for the preparation of the bids, given the complexity of the services covered by the call for tenders with pre-selection, he may, during the first half of this time limit, ask the project owner, by any means that can give a certain date, to postpone the date of the bid opening session.

The competitor's letter must contain all the information necessary for the project owner to assess the request for postponement.

If the project owner acknowledges the merits of the competitor's request, he will postpone the date of the bid opening session.

In this case, the postponement, the duration of which is left to the discretion of the project owner, is the subject of a registered letter with acknowledgement of receipt, sent to the admitted competitors. This letter shall indicate the new date set for the opening of bids.

Postponement of the bid opening date may be requested only once, regardless of which competitor requests it.

ART. 59. – Requests for clarification or information from competitors

In the case of calls for tenders with pre-selection, the provisions of article 25 of this decree shall apply to requests for clarification or information from competitors.

ART. 60. –Content and submission of files

The files of admitted competitors must include the documents required by the letter of admission provided for in article 58 of this decree and be submitted in the form and under the conditions laid down in article 32 of the same decree.

ART. 61. –Submission of technical offers and variant offers

Technical offers and variant offers shall be submitted under the conditions and in the forms provided for, respectively, in Articles 31 and 33 of this Decree.

ART. 62. –Submission and withdrawal of envelopes

The submission and withdrawal of envelopes by admitted competitors shall be carried out in accordance with the conditions laid down in Articles 34 and 35 of this Decree.

ART. 63. –Period of validity of bids

Competitors shall remain bound by their tenders during the bid validity period provided for in Article 36 of this Decree.

However, this period shall begin to run from the date of the bid opening session provided for in Article 64 below.

ART. 64. –Session for opening competitors' bids and evaluating tenders and final results

1 –The bid opening session is public. It is held at the place, on the day and at the time stipulated in the letter of admission provided for in article 58 of this decree. If this day is declared a public holiday or a non-working day, the meeting will be held on the next working day at the same time.

The president of the pre-selection tendering commission opens the bid opening session.

2 –He invites the competitors present who have not submitted their bids to hand them over to him immediately.

He then invites competitors who have discovered that their bids files are incomplete to submit the missing documents in a sealed envelope marked «missing documents» and finalises the list of envelopes received.

No envelopes or additional documents may be submitted or withdrawn after this formality has been completed.

The president of the pre-selection tendering commission then ensures that the members whose attendance is mandatory are present.

In cases where one or more of these members, is/are absent, the president shall invite the members present at the bid opening session to initial at the same time the envelopes received, the flaps and the parts to which they are affixed. These envelopes must remain closed and kept in a safe place by the president until they are opened.

3 –In cases where one or more members, whose attendance is compulsory, is /are absent, the president postpones the bid opening session for forty-eight hours and informs the competitors and members of the commission present of the place, date and time scheduled for resuming the bid opening session. He then asks the project owner to send a letter to the absent member(s). This letter must specify the place, date and time of the new bid opening session.

In cases where one or more members, whose attendance at the new session is compulsory, is/ are absent, this one shall be validly held.

Afterwards, or when the session is resumed if it has been postponed, the president checks the existence of the document used to invite the admitted competitors.

4 –The president asks the members of the commission to express any reservations or observations they may have regarding any defects in the procedure.

When the president is satisfied that the reservations or observations made are well-founded, he ends the procedure, under his responsibility, and loudly informs the competitors present.

If, on the other hand, the president considers that the reservations or observations made are unfounded, he decides, under his responsibility, to continue the procedure and to record them in the minutes of the bid opening session.

The president gives the commission members the written support containing the estimated cost of the services.

5 –The members of the commission shall initial all the pages of this support, which must be kept by the president with the tender documents file.

6 –The president shall draw up a list of tenders submitted by admitted competitors, whether they are submitted or received on the date and at the time specified in the letter of admission.

Once this formality has been completed, the commission's work continues as follows, depending on the case:

- a) When neither the technical offer, which may or may not include the variant offer, nor the submission of prospectuses, notices and technical documents are required, the commission shall continue its work and proceed with the opening and examination of the financial offers of the admitted competitors, in accordance with the provisions of paragraphs 8 to 10 of this article;
- b) When the submission of prospectuses, notices or other technical documents and/or the submission of a technical offer including or not including a variant offer is required, the president opens, as the case may be, the envelopes containing the prospectuses, notices or other technical documents and/or the envelopes containing the technical bids of the admitted competitors. He reads out the documents contained in each envelope;
- c) The members of the commission shall, at the same time, initial the envelopes containing the competitors' bids, the flaps and the parts to which they are affixed ;
- d) The envelopes containing the financial bids must remain closed and kept in a safe place by the president until they are opened, in accordance with the conditions laid down in Article 42 of this Decree;

In concertation with the members of the commission, the president shall set :

- the date and time of the session that will be held to examine the prospectuses, notices or other technical documents and/or the technical offer in accordance with the provisions of articles 40 and 41 of this Decree, if applicable ;
- The date and time of the new public session, which he will communicate to the competitors present.

7 –When the public session resumes in accordance with the provisions of article 42 of this decree, the president reads out the list of selected competitors and the list of unsuccessful competitors, without stating the reasons for their elimination following the examination of the prospectuses, notices or other technical documents and/or the technical offer.

8 –The president then opens the envelopes marked « financial offer » and reads out the amounts indicated on the acts of commitment.

9 –The members of the commission shall initial the acts of commitment and, as appropriate, the price schedules, the itemised estimates, the price schedules -itemised estimates, the global price schedules, the breakdown of the global amount and, where applicable, the supply price schedules.

Once this formality has been completed, the public session ends and the competitors and the public leave the room.

10 –The commission shall evaluate the financial offers in accordance with the provisions of articles 43 to 47 of this decree.

ART. 65. –Cancellation of the call for tenders with pre-selection

The cancellation of calls for tenders with pre-selection is carried out in accordance with the provisions of article 48 of this decree.

Section II. –The competition

ART. 66. –Competition principles and terms

1 –The competition covers either:

- a) The design of a project;
- b) Both the design of a project and the conduct of the related study;
- c) The design of a project, the conduct of the related study and the monitoring and control of its completion;
- d) The design and implementation of the project, in the case of a design-build contract as provided for in article 11 of this decree.

The services that may be the subject of a competition relate, in particular, to the fields of national land-use planning, urban planning or engineering, as well as services that are the subject of design-build contracts.

2 –The competition is organised on the basis of a programme drawn up by the project owner.

3 –The competition includes a public call for competition. Competitors wishing to take part may submit an application for admission. Only those competitors selected by the competition jury at the end of the admission session in accordance with the provisions of article 74 of this decree may submit projects.

4 –The projects proposed by the selected competitors are examined and ranked by a jury.

5 –The opening of bids takes place in a public session.

ART. 67. –Competition programme

The competition programme shall identify the needs to be met by the project and set out the estimated consistency of the service and the maximum estimated budget for its execution.

The programme shall also indicate the following :

- A statement of the objective sought by the competition and an outline of the main aspects to be taken into account, especially the technical, functional, aesthetic and financial aspects ;
- A definition of the project's components and consistency.

The competition programme provides for the allocation of premiums and the number of projects to be awarded premiums, up to a limit of five projects, the top-ranked among the shortlisted projects. It also sets the amounts of these premiums.

The amount of the premium awarded to the holder of the contract which is the subject of the competition is deducted from the sums due to him under this contract.

ART. 68. –Publication of the competition

Subject to the provisions of article 134 of this decree, the competition notice is published in accordance with the provisions set out in subparagraphs 1 and 2 of paragraph 2 of I) of article 23 of this decree.

However, this notice must be published at least fifteen days before the date set for the admission session.

This notice shall specify :

- a) The subject of the competition with an indication of the place where the services are to be performed, the municipality, province or prefecture and the region concerned ;
- b) The project owner conducting the competition;

- c) The office(s) and address of the project owner where the competition file may be collected;
- d) The office and address of the project owner where the admission files may be submitted or addressed;
- e) The place, day and time fixed for holding the admission session, specifying that competitors can submit their admission files directly to the president of the competition jury at the opening of the session;
- f) The email address of the public procurement portal from which the competition files can be downloaded and, where applicable, that of the website or websites used by the project owner to publish the competition notice;
- g) The supporting documents provided for by the competition rules that any competitor must provide;
- h) The qualification or qualifications required and the category or categories in which the competitor must be classified, for works contracts or the field or fields of activity for study and project management contracts, in accordance with the regulations in force.

ART. 69. –Competition rules

- I) The competition shall be subject to competition rules established by the project owner. This regulation shall provide, in particular, for :
- a) The list of documents to be provided by competitors in accordance with the provisions of paragraph II) of Article 53 of this Decree ;
 - b) The criteria for selecting competitors take especially into account :
 - The guarantees provided by competitors and their legal, technical and financial capacities ;
 - Competitors' professional references, if any.

These criteria are assessed on the basis of the documents contained in the administrative and technical files.

- c) The criteria for evaluating and ranking projects:
 - 1 –Where the competition is concerned solely with the design of a project, the criteria for evaluating the projects will relate, in particular, to :
 - The estimated cost of the project;
 - The innovative nature of the project;
 - The rate of transfer of skills;
 - The aesthetic and functional qualities;
 - Performances related to environmental protection and sustainable development;
 - the development of renewable energies and energy efficiency;
 - Conservation of water resources.
 - 2 –Where the competition concerns the design of a project and the conduct of the related study and/or the monitoring or supervision of the implementation of the said project or a design-build contract, the criteria for evaluating projects and bids shall relate in particular to :
 - the proposed methodology;
 - the human resources and material means to be deployed to carry out the service;
 - the timetable for allocating human resources ;
 - The innovative nature of the project;
 - the quality of the technical assistance;
 - The rate of transfer of skills;
 - the guarantees provided;
 - the proposed implementation schedule;
 - The specific experience and profile of the staff with regard to the nature of the services to be provided;

- The aesthetic and functional qualities;
- Performances related to environmental protection and sustainable development;
- the development of renewable energies and energy efficiency;
- . Conservation of water resources.

3 –A score is awarded to each of the criteria referred to in paragraphs 1) and 2) above.

The technical score is determined on the basis of the score awarded to each of the criteria referred to above.

The project owner must require, in the competition rules that competitors obtain a minimum overall technical score for all the criteria for admission and, if necessary, a minimum admission score for each criterion.

The project owner must also stipulate in the competition rules that the competitor with the highest overall score is declared the successful tenderer, in accordance with the provisions of article 82 of this decree.

The criteria for evaluating competitors' bids and the award of the contract must be directly related to the subject of the competition, be objective, non-discriminatory and not disproportionate to the consistency of the services to be provided.

d) The convertible currency or currencies in which the price of the financial offer must be expressed, where the competitor is not established in Morocco.

For the purposes of evaluating and comparing bids, the amounts of bids expressed in foreign currencies must be converted into dirhams.

This conversion is made on the basis of the reference exchange rate of the dirham in force, given by Bank Al-Maghrib, on the first working day of the week preceding that of the bid opening day.

e) The language(s) in which the documents contained in the files and the bids submitted by the competitors must be drawn up;

II) The competition rules are signed by the project owner before the contract award procedure is launched.

ART. 70. –Competition file

The competition shall be the subject of a file drawn up by the project owner. This file shall include:

- a) A copy of the competition notice;
- b) The competition programme;
- c) The model of the application for admission;
- d) The model of the declaration of honor;
- e) The consultation regulations.

The project owner shall send the competition file to the members of the jury at least eight days before the date of publication of the competition notice on the public procurement portal.

The members of the jury have a period of eight days from the date of receipt of the competition file to send any comments they may have to the project owner.

The competition file is made available and given to the competitors under the conditions and in the forms set out in paragraphs 3 to 6 of article 22 of this decree.

Exceptionally, the project owner may make changes to the competition file without changing its subject.

These changes must be communicated to all competitors who have downloaded or withdrawn the competition file and made available to the other competitors.

Where the changes require the postponement of the date scheduled for the admission session, this postponement shall be the subject of a notice published under the conditions provided for in paragraph 7 of article 22 of this decree.

ART. 71. –Conditions required from competitors and justification of their abilities and qualities

In the case of a competition, the conditions laid down in Article 27 of this decree shall apply to competitors.

The documents to be submitted by competitors to prove their abilities and qualities are the same as those provided for in paragraph II) of article 53 of this decree.

ART. 72. – Content, presentation, submission and withdrawal of admission file

The content, presentation, submission and withdrawal of the admission file shall be set in accordance with the provisions of Article 54 of this Decree.

ART. 73. –Competition jury

The composition of the competition jury shall be determined in accordance with the provisions of article 38 of this decree.

The competition jury shall also include a representative from the ministerial department involved in the field in relation to the subject of the competition.

In case of absence of this representative, who shall be duly convened by the project owner, the session shall be validly held.

ART. 74. –Admission session

The works of the admission session shall be conducted in accordance with the provisions of Article 56 of this Decree.

ART. 75. –Minutes of the admission session

The minutes of the admission session are drawn up in accordance with the provisions of article 57 of this decree.

ART. 76. –Final results of the admission session

The project owner shall inform the excluded competitors of their elimination by registered letter with acknowledgement of receipt.

This letter setting out all the reasons for elimination, must be sent to the unsuccessful competitors no later than the fifth day following the date of completion of the admission session.

Within the same time limit, he shall inform, by registered letter with acknowledgement of receipt, the admitted competitors, of their admission, the place where the projects and, potentially, the bids are to be submitted, the date, time and place of the competition jury meeting and the date scheduled for the opening of the bids.

By the same admission letter, the project owner invites each admitted competitor to withdraw the competition file and submit:

- His project supported by an estimate of the overall cost of the said project ;
- The documents of the administrative file provided for in subparagraph 2 of paragraph A of II) of Article 53 of this decree;
- His financial offer, when the competition relates to the design of a project, the conduct of the related study and/or the monitoring or control of the implementation of this project or a design-build contract.

However, when the competition is concerned solely with the design of a project, no financial offer shall be required.

This letter of admission must be sent to the admitted competitors at least forty days before the date set for the bid opening session.

If one of the competitors considers that the time limit set by the letter of admission is not sufficient for the preparation of the projects, and, where applicable, the bids, given the complexity of the services, he may, during the first half of this time limit, request the project owner, by letter transmitted by any means that can give a certain date, to postpone the date of the bid opening session.

The competitor's letter must contain all the information necessary to enable the project owner to assess the competitor's request.

If the project owner acknowledges that the competitor's request is well-founded, he will, on his own responsibility, postpone the date of the bid opening session.

In this case, the postponement, the duration of which is left to the discretion of the project owner, is the subject of a registered letter with acknowledgement of receipt, sent to the admitted competitors. This letter shall indicate the new date set for the opening of bids.

Postponement of the date of the bid opening session for the reason mentioned above may be requested only once, regardless of which competitor requests it.

ART. 77. –Documents and information to be provided to the admitted competitors

The project owner shall make the following elements available to the admitted competitors:

1 –A file containing, where the competition relates solely to the design of the project, the technical documents, plans and diagrams and any other data that the project owner deems useful for the development of this design.

2 – A file containing, when the competition concerns one of the cases provided for in b), c) and d) of paragraph 1) of article 66 of this decree, the following documents:

–A copy of the draft contract to be concluded;

–Plans, diagrams, technical documents and any other data relating to the project, where applicable ;

–The model of the act of commitment;

–The models, as appropriate, of the price schedule, the itemised estimate, the price schedule-itemised estimate, the global price schedule and the breakdown of the global amount.

The project owner may organise a meeting and/or a site visit in accordance with the provisions of article 26 of this decree.

ART. 78. –Content and submission of files

The files of admitted competitors must include the projects and documents required by the letter of admission provided for in article 76 of this decree and be submitted in accordance with the provisions of article 32 of the same decree.

ART. 79. –Submission and withdrawal of competitors' envelopes

The submission and withdrawal of envelopes by admitted competitors shall be carried out in accordance with the provisions of Articles 34 and 35 of this Decree.

ART. 80. –Period of validity of bids

In accordance with the provisions of Article 36 of this Decree, competitors shall remain bound by their tenders during the bid validity period, which shall begin to run from the date of the bid opening session.

ART. 81. –Opening of envelopes containing the projects proposed by competitors

1 –The bid opening session is public. It is held at the place, on the day and at the time stipulated in the letter of admission. If this day is declared a public holiday or a non-working day, the meeting will be held on the next working day at the same time.

The president of the competition jury opens the bid opening session.

2 –He invites the competitors present who have not submitted their bids to hand them over to him immediately.

He then invites competitors who have discovered that their files are incomplete to submit the missing documents in a sealed envelope marked « missing documents » and finalises the list of envelopes received.

No envelopes or additional documents may be submitted or withdrawn after this formality has been completed.

The president of the jury ensures that the members whose presence is compulsory are present.

In cases where one or more members, whose attendance is compulsory, is/are absent, the president shall invite the members present at the bid opening session to initial at the same time the envelopes received, the flaps and the parts to which they are affixed. These envelopes must remain closed and kept in a safe place by the president until they are opened.

3 –In cases where one or more members, whose attendance is compulsory, is /are absent, the president postpones the bid opening session for forty-eight hours and informs the competitors and members of the jury present of the place, date and time scheduled for resuming the public bid opening session. He then asks the project owner to send a letter to the absent member(s). This letter must specify the place, date and time of the new bid opening session.

In cases where one or more members, whose attendance at the new session is compulsory, is/ are absent, this one shall be validly held.

4 –Afterwards, or when the session resumes if it is postponed, the president checks the existence of the letter of admission used to invite the admitted competitors

The president reads the list of admitted competitors, without giving the reasons for the elimination of the unsuccessful competitors.

5 –The president opens the envelopes submitted by the admitted competitors, checks that all the required documents are enclosed and draws up a report.

Once this formality has been completed, the president shall inform the competitors present and the members of the jury of the place, date and time set for resuming the public session.

The public session ends. The competitors and the public leave the room.

ART. 82. –Evaluation and ranking of projects and award of the contract

I) the competition jury shall evaluate the projects proposed by the competitors behind closed doors. Before making its decision, the jury may consult any expert or technician in order to enlighten it on particular points of the proposed projects or set up a sub-commission to analyse them.

When the competition jury decides to consult an expert or a technician, the president of the jury asks the project owner to convene the expert and/or technician concerned to take part in the work of the jury or sub-commission.

The sub-commission may not be composed exclusively of members of the jury.

The assessments made by the experts, technicians or members of the sub-commission must be objective, non-discriminatory, verifiable and duly motivated. These assessments must not concern the admissibility or otherwise of the projects.

The conclusions of the experts, technicians or members of the sub-commission are recorded in reports which they draw up and sign under their own responsibility.

Before issuing its opinion, the jury may contact the competitors in writing in order to provide clarification on their projects.

It may also ask one or more competitors to make some changes to their projects.

These modifications may relate to the design and/or implementation of the project. In this case, the competitor shall, where applicable, be required to indicate the cost resulting from these modifications. The processes and costs proposed by competitors may not be disclosed to other competitors.

The jury rejects any project whose completion cost exceeds the maximum estimated budget set out in the competition programme, for the execution of the project.

II) The jury then evaluates and ranks the projects on the basis of the criteria set out in the competition rules, as follows:

A. Where the competition is concerned solely with the design of a project,

The jury shall rank the projects on the basis of the technical and aesthetic value of each project and its overall cost, in accordance with the criteria set out in the competition rules;

The jury rejects projects that do not meet the criteria set out in the competition rules and decides which projects are to be selected.

The competition jury rates the project according to the criteria set out in the competition rules, assigning a score out of one hundred (100) to each criterion ;

the jury rates the estimated cost of the proposed project, excluding taxes, by assigning a score out of one hundred (100) points to the lowest estimate and marks inversely proportional to the amounts of the other estimates.

In order to rank the bids and draw up the list of competitors to be awarded prizes, the jury will weight the scores obtained by each competitor according to the proposed project and the estimated cost of the project excluding taxes.

The overall score will be obtained by adding together the technical score and the score for the estimated cost excluding taxes of the project, after applying a weighting as follows:

–Eighty per cent (80%) for the proposed project ;

–Twenty percent (20%) for the proposed cost excluding taxes of the project.

B. When the competition concerns one of the cases provided for in sub-paragraphs b), c) and d) of paragraph 1) of article 66 of this decree:

1 –Cases provided for in subparagraphs b) and c) of article 66 of this decree :

The jury shall examine and evaluate the projects on the basis of the technical and aesthetic value of each project, its cost and, where applicable, the conditions of its execution, in accordance with the criteria set out in the competition rules.

The jury rejects projects that do not meet the criteria set out in the competition rules and decides which projects are to be selected.

If necessary, the competition jury will finalise with the selected competitors the terms of the draft contract to be submitted to the project owner and negotiate the possible repercussions of the above changes on the cost of the project.

The competition jury rates the project according to the criteria set out in the competition rules, assigning a score out of one hundred (100) to each criterion.

The competition jury rates the estimated cost of the proposed project, excluding taxes, by assigning a score out of one hundred (100) points to the lowest estimate and marks inversely proportional to the amounts of the other estimates.

At the end of this evaluation, the public session shall be resumed on the date and at the time announced by the president of the jury, as posted by the project owner.

The competition jury opens the envelopes containing the competitors' financial bids, in accordance with the provisions of article 42 of this decree.

Once this formality has been completed, the public session is closed. The public and the competitors leave the room.

The jury continues its work behind closed doors. It excludes competitors whose financial offers:

- Do not comply with the subject of the contract ;
- Are not signed;
- Are signed by a person not authorised to bind the competitor concerned with regard to the document or documents justifying the powers conferred;
- Express restrictions or reservations;
- Present differences in the price wording, the unit of account or the quantities compared to the data provided in the technical description, in the price schedule and the itemised estimate.

The jury then verifies the arithmetic operations of the financial bids submitted by the selected competitors, taking into account any discounts granted in these bids. Where necessary, it corrects any calculation errors and re-establishes the exact amounts of the bids concerned.

The jury evaluates and rates the financial bids, assigning a score out of one hundred (100) points to the lowest bid and marks inversely proportional to the amounts of the other bids.

The jury evaluates the bids in order to select the most economically advantageous bid. To this end, it weights the scores obtained by each competitor according to the project proposed, the estimated cost of the project excluding taxes and the financial offer.

The overall score will be obtained by adding together the technical score, the score for the estimated overall cost of the project, excluding taxes, and the financial score, after applying a weighting as follows:

- Seventy percent (70%) for the proposed project ;
- Twenty per cent (20%) for the proposed overall cost of the project, excluding taxes;
- Ten percent (10%) for the financial offer.

In this case, the special specifications book must stipulate a tolerance threshold in relation to the estimated overall cost of the project on the basis of which the contract is awarded, as well as the consequences for the successful competitor if the said tolerance threshold is exceeded.

2 –Case provided for in d) paragraph 1) of article 66 referred to above :

After examining and evaluating the projects concerning the design-build contract, the jury determines the overall score for each project by adding together the technical score and the financial score obtained in accordance with subparagraph 1 of B above, after applying a weighting as follows:

- Seventy percent (70%) for the proposed project;

–Thirty percent (30%) for the financial offer.

III) The jury then ranks the competitors' projects. The competitor with the highest overall score is ranked first.

If two or more projects have obtained equivalent overall scores, the jury shall select the competitor with the best technical score for the proposed project.

If these technical scores are also equivalent, the jury will draw lots to rank the competitors.

IV) Following this ranking, the president of the competition jury invites, by registered letter with acknowledgement of receipt, the competitors concerned to :

- a) Produce the additional documents of the administrative file provided for in the third paragraph of A of II) of article 53 of this decree ;
- b) Confirm, where applicable, the rectification of any material errors found;
- c) Rectify, if necessary, discrepancies between the various documents of their files.

To this end, the jury sets a deadline of at least seven days from the date of receipt of the letter of invitation.

The president of the jury suspends the project evaluation and ranking session and sets the date and time for resuming the session.

Competitors' responses shall be submitted in a sealed envelope, which shall clearly include the following information:

- the name and address of the competitor;
- the subject of the competition;
- the warning that « the envelope must only be opened by the president of the jury » and clearly marked « supplementary information to the file and response elements ».

This envelope must either be lodged, against receipt, at the project owner's office indicated in the letter of invitation, or sent by registered letter with acknowledgement of receipt or by electronic means in accordance with the provisions of article 135 of this decree.

The deposit of this envelope is recorded in the special register provided for in article 4 of this decree.

The jury meets at the place, on the day and at the time set for the resumption of the session, checks the existence of the medium used to invite the competitors concerned and verifies the responses and documents received.

After examining the documents and answers received, the jury :

- 1 –Excludes any competitor who:
 - Fails to reply within the given time limit;
 - Does not produce the required documents or produces non-conforming documents;
 - Fails to rectify any discrepancies noted ;
 - Does not confirm the rectification of material errors requested.
- 2 –Then draws up the final list of competitors who satisfy the conditions laid down in a), b) and c) of IV above;
- 3 –Proposes to the project owner that it select the project ranked first and award a prize to the five top ranked candidates.

Prizes are not awarded to competitors excluded in accordance with the provisions of 1) above.

The ranking proposed by the jury may not be changed under any circumstances.

ART. 83. –Unsuccessful competition

The jury shall declare the competition unsuccessful in one of the following cases:

- a) If no tender has been submitted or lodged ;
- b) If no competitor has been selected after the admission session;
- c) If the overall cost proposed for each project exceeds the maximum estimated budget, provided for in the competition programme, for the performance of the service in the cases provided for in a), b) and c) of Article 66 of this Decree;
- d) If all the financial offers exceed the maximum estimated budget provided for the service, in the case of a competition relating to a design-build contract as referred to in d) of Article 66 of this Decree;
- e) If no project is deemed acceptable according to the criteria set out in the competition rules.

If a competition is declared unsuccessful, this does not justify recourse to the negotiated procedure.

ART. 84. –Minutes of the competition

The competition jury draws up, immediately, minutes of each of its meetings. These minutes, which are neither made public nor communicated to the competitors, shall record the discussions held by the jury with the competitors, the observations made, if any, by the members and state their points of view on these observations.

They also include the final results of the competition and state the reasons for eliminating the unsuccessful competitors and the reasons for the choice made by the jury.

The minutes are immediately signed by the president and the members of the jury.

The draft contract that the jury proposes to the project owner to conclude with the selected competitor and any report drawn up, where applicable, by the experts, technicians or sub-commissions, shall be attached to the minutes.

An extract from the minutes is published on the public procurement portal and posted within the premises of the project owner within twenty-four hours following the date of completion of the jury's work. This extract must be posted for at least fifteen days.

ART. 85. –Final results of the competition

The provisions of article 47 of this decree shall apply to the final results of the competition.

ART. 86. –Cancellation of the competition

The competition shall be cancelled in accordance with the provisions of Article 48 of this Decree.

If the competition is cancelled, the project owner shall award the prizes provided for in the competition programme to the top-ranked competitors.

Section III. –Negotiated procedure

ART. 87. –Principles

1 –The negotiated procedure is a method of awarding contracts whereby a negotiation commission selects the successful tenderer after consulting one or more competitors, as the case may be, and negotiating the terms of the contract.

These negotiations especially concern the price, the period of performance, the date of completion or delivery and the conditions of performance or delivery of the service. They may not, under any circumstances, relate to the subject or consistency of the contract.

2 –The negotiation commission is made up of the president, his deputy and two representatives from the project owner's organisation, appointed by the president.

The commission may call on any person, expert or technician it deems useful to contribute to its work.

When the negotiation commission decides to consult an expert or a technician, the president of the commission asks the project owner to invite the expert and/or technician concerned to take part in the work of the commission.

3 –Negotiated contracts are awarded with prior publicity and competitive tendering or without prior publicity and competitive tendering.

Negotiated contracts with prior publicity and competitive tendering are awarded in accordance with the provisions of article 88 of this decree.

With the exception of the cases provided for in subparagraphs 7 and 9 of paragraph II) of Article 89 below, negotiated contracts without prior publicity and competitive tendering are awarded after negotiation of the terms of the contract by the negotiation commission with the competitor or competitors consulted. The negotiations shall be the subject of the report referred to in paragraph 9 of Article 88 below.

4 –Any candidate for a negotiated contract must provide, at the beginning of the procedure, an administrative file and a technical file comprising all the documents provided for in article 28 of this decree.

5 –With the exception of the case referred to in subparagraph 2 of paragraph II) of Article 89 below, the award of a negotiated contract shall give rise to the drawing up, by the project owner, of an administrative certificate relating to the head of exception justifying the use of the negotiated procedure and explaining, in particular, the reasons for the choice of this procedure.

6 –The competent authority may, by motivated decision, terminate the negotiated procedure at any time.

The decision to cancel the negotiated procedure without prior publicity and competitive tendering is placed in the contract file.

The decision to cancel the negotiated procedure with prior publicity and competitive tendering is published on the public procurement portal and placed in the contract file.

ART. 88. –Negotiated procedure with prior publicity and competitive tendering

1 –The negotiated procedure with prior publicity and competitive tendering shall be the subject of a notice of the call for competition published on the public procurement portal and in at least one nationally circulated newspaper chosen by the project owner.

At the same time, this notice may be brought to the attention of potential competitors and, where appropriate, professional bodies, by inserting it in specialised publications or by any other means of advertising.

2 –The advertising notice shall specify :

- a) The subject of the negotiated contract with an indication of the place where the services are to be performed, the municipality, province or prefecture and region concerned ;
- b) The project owner carrying out the negotiated procedure ;
- c) The address and office of the project owner where the contract file may be collected;
- d) The documents to be provided by competitors;
- e) The address and office of the project owner where competitors' bids may be submitted or addressed;
- f) The email address of the public procurement portal from which the negotiated procedure file can be downloaded and, where applicable, that of the website or websites used by the project owner to publish the notice;
- g) The deadline for submitting applications.

3 –The period between the date of publication of the advertising notice in the latest publication medium and the deadline for receipt of applications shall be at least ten days.

4 –The file for the negotiated contract with prior publicity and competitive tendering includes, in particular:

- a) Copy of the advertising notice;
- b) The special specifications book;
- c) The plans and technical documents, where applicable;
- d) The model of the act of commitment;
- e) The elements of the technical offer, where applicable
- f) Models of the price schedule and the itemised estimate or the model of the price schedule-itemised estimate, in the case of a unit price contract;
- g) The model of the supply price schedule, where this is provided for in the special specifications book;
- h) For global price contracts, the model of the global price schedule and the breakdown of the global amount by item with or without indication of the lump-sum quantities;
- i) The model of the detailed breakdown of prices, where applicable;
- j) The model of the declaration of honor;
- k) The model of the workload plan declaration;
- l) The consultation regulations provided for in article 21 of this decree.

With the exception of the plans and technical documents provided for in c) above, the negotiated contract file is published on the public procurement portal, made available to competitors and can be downloaded from the public procurement portal as soon as the notice is published.

5 –The competitor's application file consists of an administrative file and a technical file.

The application file shall be placed in a sealed envelope. It must either be lodged, against receipt, at the project owner's office, or sent by registered letter with acknowledgement of receipt.

6 –After receipt of the application files, the negotiation commission examines the administrative and technical files and draws up the list of admitted competitors whose legal, technical and financial capacities are deemed sufficient.

The number of competitors admitted to negotiate may not be less than three, unless the number of competitors admitted is less than three.

The project owner sends a consultation letter to admitted competitors, setting a deadline for the submission of bids. He also sends a letter to unsuccessful competitors, giving them the reasons for their elimination.

7 –After receiving the bids, the commission begins negotiations with each of the admitted competitors, however many there may be.

8 –At the end of these negotiations, the commission proposes to the competent authority that the contract be awarded to the competitor who submitted the most economically advantageous tender as defined in article 43 of this decree.

9 –A report on the negotiations must be drawn up and signed by the president and the members of the negotiation commission. This report is placed in the contract file.

This report must in particular include references to the publication of the negotiated contract notice in the newspaper and on the public procurement portal and the list of competitors who took part in these negotiations. It must also specify the content of the negotiations, the amounts of the competitors' bids and the reasons for choosing the successful competitor.

ART. 89. –Cases of use of negotiated contracts

A negotiated contract may be awarded in one of the cases provided for in paragraphs I) and II) of this article.

I) The following services may be the subject of negotiated contracts after prior publicity and competitive tendering:

1 –Services that have been the subject of a tendering procedure that has been declared unsuccessful under the conditions set out in articles 45 and 65 of this decree.

In this case, the initial conditions of the contract must not be modified in any way and the period between the date on which the procedure was declared unsuccessful and the date of publication of the negotiated contract notice must not exceed twenty-one days.

2 –Services that the project owner arranges for third parties to carry out under the conditions set out in the original contract, following the default of his contractor.

II) The following services may be the subject of negotiated contracts without prior publicity and without competitive tendering:

1 –Services which, due to their technical requirements or their complex nature requiring special expertise, can only be entrusted to a specific service provider.

2 –Services that the needs of national defence or public security require to be kept confidential and secret. Such contracts must first be authorised, on a case-by-case basis, by the Head of Government on the basis of a special report drawn up by the competent authority concerned.

3 –Objects whose manufacture is exclusively reserved for holders of invention patents.

4 –Services provided to public institutions which have exclusive rights under the legislation and regulations in force;

5 –Services to be carried out as part of a spontaneous bid based on a specific technology that only the bearer of the bid possesses or masters, as provided for in paragraph 3 of Article 13 of this Decree;

6 –Services to be carried out in cases of extreme urgency resulting from circumstances unforeseeable by the project owner and for which he is not responsible, and whose execution is not compatible with the deadlines required for prior publicity and competitive tendering.

The purpose of these services is to deal with, in particular, a shortage or the occurrence of a catastrophic event such as an earthquake, floods, tidal wave, drought, epidemic, pandemic, epizootic, devastating plant diseases, locust invasion, fire, or buildings, dilapidated dwellings and structures threatening ruin, or the occurrence of an event endangering the security of networks and installations or the health of the consumer or animal or natural heritage.

Contracts for these services must be strictly limited to the requirements necessary to deal with the emergency situation.

7 –Services of an urgent nature relating to territorial defence, population security or traffic safety, air or sea security, or those relating to the offshore exploration campaign, the performance of which must begin before all the terms and conditions of the contract have been defined. These services are provided in accordance with the forms and conditions set out in paragraph b) of article 90 below.

8 –Services related to the organisation of official ceremonies or visits of an urgent and unforeseeable nature, the performance of which is not compatible with the deadlines required for prior publicity and competitive tendering.

9 –The additional services to be entrusted to the contract holder, if there is an interest, from the point of view of the execution time or the smooth running of this execution, in not introducing a new contractor, supplier or service provider, when the services in question, unforeseen at the time of the award of the main contract, shall be considered as an accessory to the said contract and shall not exceed ten percent (10%) of its amount.

As regard works, its execution must also involve equipment already installed or used on site by the contractor.

The contracts for these additional services are drawn up in the form of amendments to the initial contracts relating thereto.

ART. 90. –Forms of negotiated contracts

Negotiated contracts are concluded :

- a) Either on the basis of the act of commitment and the special specifications book;
- b) Or, exceptionally, by exchange of letters or by special agreement, for services of an urgent nature provided for in paragraph 7 of II) of article 89 of this decree and the performance of which is incompatible with the preparation of the contract documents.

The exchanged letters or the special agreement must, at least, stipulate the nature of the services and the limits of the commitments made by both parties in terms of amount and duration. The letters or agreement must also specify the final or provisional price.

The exchanged letters or the special agreement must be regularised in the form of a final price contract within the following three months.

Section IV. –Services on purchase orders**ART. 91. –Scope of application**

1 –Purchase orders may be used to acquire supplies and carry out work or services, up to a limit of five hundred thousand (500,000) dirhams, all taxes included.

The limit of five hundred thousand (500,000) dirhams referred to above is assessed within the framework of a budget year, according to services of the same nature and according to each authorising officer or sub-authorising officer.

In case of departments in charge of national defence or public security, this limit is also assessed by an authorised person appointed by order of the Head of Government adopted on a proposal from the Minister concerned, after approval by the Minister of Finance.

2 –The list of services that may be the subject of purchase orders is set out in Annex No. 4 of this decree. This list may be amended or supplemented by order of the Minister of Finance, adopted on a proposal from the Minister concerned, after obtaining the opinion of the National Commission for Public Procurement.

3 –The purchase orders determine the specifications and consistency of the services to be provided and, where applicable, the turnaround time or delivery date and the guarantee conditions.

4 –The services to be provided under purchase orders must be subject to prior competition, except where competition is not possible or is incompatible with the nature of the services.

Where competition is not possible or is incompatible with the nature of the services, the project owner or the authorised person must draw up an administrative certificate justifying this impossibility or incompatibility.

The project owner is required to publish a purchase notice on the public procurement portal for a period of not less than forty-eight hours.

The purchase notice shall specify:

- a) The subject and consistency of the service ;

- b) The place and the turnaround time or the delivery date of the service;
- c) The address of the project owner's office where competitors' quotes can be submitted;
- d) The date and time limit by which competitors' quotes must be received.

5 –The quotes signed by the competitor is placed in a sealed envelope and lodged at the project owner's offices.

The envelopes lodged are recorded by the project owner in a register dedicated to purchase orders.

6 –Envelopes containing the quotes may also be lodged electronically, under the conditions and procedures laid down by order of the Minister of Finance.

Quotes must state the competitor's name or his identity and address, the professional tax registration number, the bank identity statement and, where applicable, the number of affiliation to the National Social Security Fund or any other special social security scheme.

7 –The project owner then examines the quotes received and ranks them in ascending order according to their amount, after rectifying any calculation errors.

The project owner awards the purchase order to the competitor who submitted the lowest bid, after confirming, where applicable, any rectification of calculation errors.

8 –In the event that two or more bids are deemed to be equivalent, preference is given to the bid submitted by the competitor carrying out its activities in the place where the service is to be provided.

This preference is given, in order of priority, to the bid submitted by the competitor carrying out its activities within the territorial jurisdiction of the municipality, province, prefecture or region.

If the bids deemed to be equivalent are those submitted by competitors carrying out their activities within the territorial jurisdiction of the same municipality, the same province or prefecture or the same region, lots shall be drawn, in order of priority, to decide between them.

9 –The project owner posts a notice regarding the results of examination of the quotes on its premises for a period of three days and publishes it on the public procurement portal. This notice shall specify the subject of the purchase order, the number of competitors who have submitted quotes, as well as the winner of the purchase order and the amount of its bid.

10 –At the beginning of each financial year, the project owner is required to publish a list on the public procurement portal, showing, by type of service, the number of purchase orders concluded during the previous financial year and their total value.

Chapter V **Architectural services**

Section one. –General provisions

ART. 92. –Provisions applicable to architectural services

Architectural services are governed by this chapter and by the following provisions of this decree:

- Chapter I with the exception of Article 5;
- Paragraph 4 of Article 14 and paragraph 1 of Article 15;
- Article 17;
- Articles 25, 36, 38 and 48;
- Chapter VI with the exception of its articles 138 and 139;
- Chapter VII;
- Articles 150, 152 and 153;
- Chapter IX ;
- Chapter X;
- Chapter XI with the exception of its articles 167 and 168;;
- Chapter XII.

Architectural services are concluded on the basis of a contract known as an «architect's contract», which sets out the administrative, technical and financial clauses applicable to the service to be provided.

The architect's contract template is set by order of the Minister of Finance.

ART. 93. –Architects' fees

The architect's fees shall be paid exclusively by the organisation to which the project owner reports.

1 –The architect's fees are obtained by applying the percentage he proposes to the amount excluding taxes of the work actually carried out and regularly observed.

The amount excluding taxes of the work referred to above must not include the amount resulting from the revision of the price of the work, any compensation awarded to the contract holder and any penalties.

The architect's fees are increased by the current rate of value added tax in force.

The architect's fees are calculated as follows:

- For the construction of new buildings, the architect's fees may not be less than four percent (4%) nor more than six percent (6%);
- For the construction of civil engineering structures, hospitals, prisons, amphitheatres, airports, ports, stadiums and other similar works or buildings, the architect's fees may not be less than four percent (4%) nor more than six percent (6%);
- For services relating to building construction projects of a repetitive nature, the architect's fees may not be less than four per cent (4%) nor more than five per cent (5%) ;
- For development services and maintenance services, the architect's fees may not be less than three per cent (3%) nor more than four per cent (4%) ;
- For decoration and interior design services, the architect's fees may not be less than three per cent (3%) nor more than four per cent (4%).

The above rates may be modified by order of the Head of Government adopted on a proposal from the Minister of Finance, after obtaining the opinion of the National Commission for Public Procurement.

2 –The architect's fees for land subdivision operations are obtained by applying a fixed price per hectare set out in the architect's contract.

3 –The architect's contract sets out the breakdown of the architect's fees and modalities of their payment.

The architect's contract also provides for a tolerance threshold in relation to the rough estimate on the basis of which the contract was awarded, as well as the consequences for the architect if the said tolerance threshold is exceeded.

Section II. –Methods of awarding contracts for architectural services

ART. 94. –Methods of award

Contracts for architectural services are awarded by open, simplified or restricted architectural consultation, by architectural competition, by negotiated architectural consultation or by grouped architectural consultation.

1 –The architectural consultation is said to be open when any competitor can obtain the consultation file and submit his application.

It allows the project owner to choose the architect who has submitted the most advantageous bid, after a competition between architects, on the basis of an architectural consultation programme and a proposal from the architectural consultation jury.

Open architectural consultation is used for projects with an estimated overall works budget of less than or equal to thirty million (30,000,000) dirhams excluding taxes.

Architect's contracts relating to land subdivision operations are awarded through open architectural consultation.

2 –Open architectural consultation is said to be simplified when bids can only be submitted by novice architects.

For the purposes of this article, a novice architect is any architect who has not been practising as a self-employed architect for more than five years.

Simplified open architectural consultation is used for projects with an estimated overall works budget of less than or equal to three million (3,000,000) dirhams excluding taxes.

The simplified open architectural consultation is concluded out under the conditions and the procedures laid down by this Decree for the open architectural consultation, subject to the following:

- the jury for the simplified open architectural consultation is made up of the president and two members appointed by the project owner, at least one of whom is an architect, a representative from the General Treasury of the Kingdom or a representative of the Ministry of Finance in accordance with the provisions of article 38 of this decree, as the case may be;
- The jury may call on any expert it deems useful to contribute to its work or set up a sub-commission.

When the jury decides to consult an expert, the president of the jury asks the project owner to convene the expert concerned to take part in the work of the jury or the sub-commission.

The sub-commission may not be composed exclusively of members of the architectural competition jury.

3 –Architectural consultation is said to be restricted when bids can only be submitted by architects whom the project owner decides to consult.

The number of architects to be consulted must not be less than five, at least two of whom must be based in the region concerned by the project.

Restricted architectural consultation allows the project owner to choose the architect who has submitted the most advantageous bid, after a competition between architects consulted, on the basis of a restricted architectural consultation programme and a proposal from the consultation jury.

Restricted architectural consultation is used for projects involving the development and maintenance of buildings with an estimated overall works budget of less than or equal to ten million (10,000,000) dirhams excluding taxes.

4 –An architectural competition is a procedure that pits architects against each other to enable the project owner to choose, after receiving a proposal from the competition jury, the design for a project and to subsequently entrust its author with the monitoring and control of its execution.

The architectural competition also allows the project owner to reward the authors of the top-ranked projects within the limit provided for in the competition programme.

Recourse to the architectural competition is compulsory for projects with an estimated overall works budget of more than thirty million (30,000,000) dirhams excluding taxes. However, the project owner may use this method of award even for projects whose amount is less than this limit.

5 –The negotiated architectural consultation allows the project owner to negotiate the terms of the contract with one or more architects under the conditions laid down in article 133 of this decree.

6 –The grouped architectural consultation is an open consultation carried out under the conditions and procedures set out in sub-section I of this chapter.

The grouped architectural consultation allows :

- a) Two or more project owners to coordinate the provision of architectural services for small projects of the same nature, as part of a group of project owners set up in accordance with the provisions of article 155 of this decree;
- b) a single project owner to provide architectural services for several repetitive small projects of the same nature.

Project owners may use the grouped architectural consultation for contracts for architectural services relating to the projects referred to in a) and b) above and for which the cumulative estimated budget of the works is less than or equal to ten million (10,000,000) dirhams excluding taxes.

First sub-section. – Architectural consultation

ART. 95. –Programme of the open architectural consultation

1 –The open architectural consultation shall be the subject of a programme indicating the needs to be met by the project and setting out its estimated scope and the maximum estimated budget set for its implementation.

2 –The open architectural consultation programme also includes the following elements :

- A statement of the objective sought by the consultation and an outline of the important aspects to be taken into account;
- A detailed definition of the project's components and consistency.
- A description of the context in which the project is being carried out, together with a statement of the town planning laws and regulations applicable to the project.

3 –Where appropriate, this programme shall be accompanied by :

- Topographical surveys of the project site ;
- Preliminary geotechnical studies likely to provide the architect with information on the planned project;
- A document attesting to the sanitation of the land subject to the project;
- Dimensional drawings;
- The information note issued by the relevant urban agency;
- Any other document relating to the project, as provided for by law no. 66-12 on the control and punishment of offences in town planning and construction.

4 –The programme must be signed by the project owner and an architect from the administration before launching the architectural consultation procedure.

5 –The programme provides for the allocation of premiums to the three top-ranked projects among those selected, and sets the amount of these premiums.

The premiums awarded to the winner of the architect's contract is deducted from the fees due to him under the said contract.

ART. 96. –Advertising of the architectural consultation

The advertising of the architectural consultation shall be governed as follows:

I) Open architectural consultation:

1 –Subject to the provisions of Article 134 of this Decree, the open architectural consultation shall be the subject of a notice which shall state:

- a) The subject of the consultation and the place where the services are to be performed, with an indication of the municipality, province or prefecture and region concerned ;
- b) The project owner carrying out the consultation ;
- c) The maximum estimated budget, excluding taxes, set for the implementation of the works to be carried out ;
- d) The office(s) and address of the project owner where the architectural consultation file may be collected;
- e) The office and address of the project owner where the tenders may be submitted or addressed;

- f) The place, day and time fixed for holding the public bid opening session, specifying that architects can submit their bids directly to the president of the architectural consultation jury at the opening of the session;
- g) The reference to the article in the consultation regulations which sets out the supporting documents that all architects must provide;
- h) The date of the meeting or site visit that the project owner intends to organise for the architects if applicable. This date must be during the last third of the advertising period and no later than five days before the date scheduled for the opening of tenders. If the day scheduled for the meeting or site visit is declared a public holiday or non-working day, the meeting or site visit will be held on the following working day at the same time;
- i) The email address of the public procurement portal and, where applicable, that of the website or websites used by the project owner to publish the architectural consultation notice;
- j) The purchase price of the plans and/or technical documents, if applicable.

2 –The notice of the open architectural consultation is published on the public procurement portal and in at least two nationally circulated newspapers chosen by the project owner, one of which is in Arabic, and, where appropriate, on the project owner's website. It is published in the language of publication of each of the newspapers.

At the same time, the notice of the architectural consultation may be brought to the attention of potential competing architects and, where appropriate, professional bodies, by inserting it in specialised publications or by any other means of advertising.

The deadline for advertising the notice of the open architectural consultation in newspapers and on the public procurement portal is set at least twenty-one days before the date set for the opening of tenders. This period runs from the day after the date of publication of the notice in the last publication medium.

3 –The simplified open architectural consultation shall be the subject of an advertising notice under the conditions set out in the first paragraph of this article.

This notice is published in a nationally circulated newspaper and on the public procurement portal. This notice must be published at least fifteen days before the date set for the bid opening session.

II) Restricted architectural consultation:

The restricted architectural consultation is the subject of a circular letter sent by registered letter with acknowledgement of receipt, on the same day, to all the architects that the project owner decides to consult.

Subject to the provisions of Article 134 of this Decree, this circular letter shall contain the following information:

- a) The subject of the architectural consultation, with an indication of the place where the services are to be performed, the municipality, province or prefecture and region concerned ;
- b) The authority carrying out the architectural consultation;
- c) The office(s) and address of the project owner where the architectural consultation file may be collected;
- d) The office and address of the project owner where the tenders may be submitted or addressed;
- e) The place, day and time fixed for holding the public bid opening session, specifying that competing architects can submit their bids directly to the president of the architectural consultation jury at the opening of the session;

- f) The reference to the article in the consultation regulations which sets out the supporting documents that all competing architects must provide;
- g) The maximum estimated budget, excluding taxes, set for the implementation of the works to be carried out ;
- h) The date of the meeting or site visit that the project owner intends to organise for the architects if applicable. Where appropriate, this date must be during the second third of the period between the date of dispatch of the circular letter and the date scheduled for the opening of bids.

The aforementioned circular letter must be sent at least fifteen days before the date scheduled for the opening of bids. This period begins on the day following the date on which the circular letter is sent.

The restricted architectural consultation file is attached to the circular letter.

ART. 97. –Requests for information from competing architects

The provisions of Article 25 of this Decree shall apply to requests for information from competing architects as part of the open architectural consultation.

ART. 98. –Meeting or site visit

The project owner may schedule a meeting or a visit to the site under the conditions set out in Article 26 of this Decree. However, he may, for some services, after mentioning this in the consultation regulations, make the admission of architects conditional upon attendance at the meeting or visit to the site.

In this case, the project owner shall issue a certificate of attendance to the architects who attended the meeting or site visit.

When a meeting or a site visit is conducted, the project owner draws up minutes listing the requests for clarification that he has received and the answers that he has provided during this meeting or site visit. These minutes are published on the public procurement portal and communicated to all architects and members of the architectural consultation jury.

Where attendance at the meeting or site visit is not compulsory, architects who did not attend the meeting or who did not take part in the site visit may not, under any circumstances, make any observations or submit any complaint regarding the conduct of the meeting or the site visit as reported in the published minutes communicated to them.

ART. 99. –Conditions required from architects

The following architects may take part in architectural consultations and be awarded architectural service contracts:

- Architects who are authorised to practice the profession of architect on a liberal basis and who are registered with the National Order of Architects;
- Architects who are in a regular tax situation, and have submitted their declarations and paid the sums due or, in the absence of payment, have provided guarantees deemed sufficient by the accountant responsible for collection, in accordance with the legislation in force on the collection of public debts;
- Architects who are affiliated to the National Social Security Fund, and regularly submit their salary statements to this organization.

The following are not eligible to participate in consultations:

- Architects in judicial liquidation;
- Architects in judicial recovery, unless special authorisation is issued by the competent judicial authority;
- Architects whose authorisation to practice the profession of architect has been definitively withdrawn or who have been suspended from practicing the profession;
- Architects who have been the subject of a temporary or permanent exclusion measure in accordance with the provisions of article 152 of this decree.

ART. 100. –Justification of capacities and qualities

Each architect is required to submit an administrative file which includes:

1 –A declaration of honor which includes the surname, first name, position and place of residence of the architect and, where he is acting on behalf of a company, the company name, the legal form of the company, the share capital, the address of the registered office, the capacity in which he is acting and the powers conferred on him, as well as the professional tax registration number, the number of affiliation to the national social security fund and the bank identity statement.

This declaration of honor also states that the competing architect:

- Has taken out, in accordance with legislation in force, an insurance policy covering all professional risks for which he may be held liable;
- Is not in judicial liquidation or judicial recovery, and if he is in judicial recovery, that he is authorised by the competent judicial authority to continue exercising his activity;
- Undertakes not to use, either personally or through an intermediary, fraud practices or corruption of persons involved in any capacity whatsoever in the procedures for awarding, managing and performing the contract;
- Undertakes not to make, either personally or through an intermediary, any promises, donations or gifts in order to influence the procedure for concluding the contract and its performance ;
- Certifies the accuracy of the information contained in the declaration of honor and in the documents provided in his application file.

2 –An extract from the company statutes and/or the minutes of the competent body conferring on the architect the power to bind the company, in the case of an architectural firm established in accordance with legislation governing the practice of the profession of architect;

3 –A certificate or a certified copy of the original certificate issued less than one year by the tax collector of the place of taxation, certifying that the architect is in a regular tax situation or, in the absence of payment that he has provided the guarantees deemed sufficient by the accountant responsible for collection, in accordance with the legislation in force on the collection of public debts;

4 –A certificate or a certified copy of the original issued less than one year by the National Social Security Fund certifying that the competitor is in a regular situation with this organization in accordance with the provisions set out in article 99 above;

5 –A certified copy of the authorisation to practice the profession of architect issued by the administration;

6 –A certificate of registration on the roll of the National Order of Architects issued less than one year ago or a certified copy of the original.

7 –Supporting documents of the nationality of the architect or the directors of the architectural firm in the case of contracts awarded for national defence or public security purposes.

8 –Certificate of attendance at the meeting or site visit, where attendance is compulsory.

Certificates of references are not required from architects

ART. 101. –Architectural consultation regulations

I) The architectural consultation shall be subject to regulations drawn up by the project owner. These regulations must set out the conditions for submitting bids and the procedures for awarding the contract.

The architectural consultation regulations include in particular:

1 –The list of documents to be provided by architects in accordance with the provisions of article 100 of this decree.

2 –Eligibility criteria that take into account the architects' legal capacities and, where applicable, the obligation to attend the meeting or site visit.

3 –The criteria for selecting and ranking bids in order to award the contract to the architect who submitted the most advantageous bid. These criteria relate to :

a) The quality of the technical proposal:

–From the point of view of the originality, relevance and creative intelligence of the architectural part, the integration of the project into the site and compliance with town planning laws and regulations;

–From the point of view of environmental protection and sustainable development, the development of renewable energies and energy efficiency, the preservation of water resources, compliance with construction standards and the use of products of Moroccan origin, especially artisanal products;

–With regard to the requirements of the architectural consultation programme concerning compliance with the surface of the various components of the programme and with comfort and safety standards and regulations;

–With regard to the rough estimate, excluding taxes, of the overall cost of the works proposed by the architect. This estimate is established based on the project's surface area ratios.

b) The fee proposal presented by the architect.

A score is awarded to each of the criteria referred to above with, possibly, a breakdown by sub-criterion.

4 –The language(s) in which the documents contained in the files and the bids submitted by the architects must be drawn up;

II. Before launching the architectural consultation, the consultation regulations must be signed by the project owner and an architect from the administration.

ART. 102. –Architectural consultation file

1 –The architectural consultation shall be the subject of a file drawn up by the project owner, which shall include :

a) A copy of the notice of the architectural consultation;

b) The architectural consultation programme;

c) A copy of the architect's draft contract;

- d) The plans and technical documents, if applicable;
- e) The model of the act of commitment;
- f) The model of the declaration of honor;
- g) The architectural consultation regulations.

2 –The project owner sends the architectural consultation file to the members of the architectural consultation jury at least eight days before the date of publication on the public procurement portal in the case of open architectural consultation or the date of dispatch of the circular letter in the case of restricted architectural consultation.

Members have a period of eight days from the date of receipt of the consultation file to send any comments they may have to the project owner.

3 –The architectural consultation files need to be available prior to publication of the notice of the open architectural consultation or the dispatch of the circular letter for the restricted architectural consultation, as the case may be, and made available to the architects from the first publication of the notice of the architectural consultation in one of the publication media referred to in Article 96 of this Decree until the deadline for submission of tenders.

The open architectural consultation files can be downloaded from the public procurement portal.

4 –The names of architects who have withdrawn or downloaded the architectural consultation file shall be entered in the special register provided for in Article 4 of this Decree, with an indication of the date and time of withdrawal or downloading, as the case may be.

5 –The architectural consultation files are provided free of charge to architects, with the exception of plans and technical documents, the reproduction of which requires specific technical equipment. The fee for providing these plans and technical documents is set by order of the Minister of Finance.

6 –If, for any reason whatsoever, the architectural consultation file is not delivered to the architect or his representative who has come to the place indicated in the notice of the open architectural consultation or in the circular letter for the restricted architectural consultation , the project owner will provide him, on the same day, a certificate stating the reason why the file has not been delivered and indicating the day on which it is to be collected so that the architect can prepare his file. A copy of this certificate is kept in the contract file.

If the file has not been delivered on the day fixed in the certificate issued to him, the architect may refer the matter, by registered letter with acknowledgement of receipt, to the hierarchical authority to which the project owner concerned reports, in the case of the State, public institutions and other legal entities governed by public law as referred to in article 2 of this decree or the governor of the prefecture or province or the wali of the region, as the case may be, in the case of local authorities, in order to explain the circumstances in which his request to obtain the aforementioned file was made and the response he has received.

After ascertaining that the request is well-founded, the authority seized shall invite the project owner in writing to immediately provide the architect concerned with the consultation file and, if necessary, to postpone the date on which the bids are to be opened for a period at least equivalent to that between the date on which the request is made and the date on which the file is handed over to the applicant.

The notice of postponement is published on the public procurement portal and in two nationally circulated newspapers chosen by the project owner, one of which is in Arabic.

7 –Exceptionally, the project owner may make changes to the architectural consultation file without changing the subject of the contract. These changes are communicated to all architects who have withdrawn or downloaded the file and are included in the file made available to the other architects.

These changes may be made at any time during the initial deadline for advertising and no later than seven days before the date of the bid opening session.

After this deadline, the project owner must postpone the date of the bid opening session by means of a corrective notice.

When the changes made to the architectural consultation file require the publication of a corrective notice, this shall be published in accordance with the provisions of paragraph 2 of article 96 of this decree.

In this case, the bid opening session may only be held after the expiration of a minimum period of ten days from the day following the date of publication of the corrective notice in the latest publication medium, without the date of the new session being earlier than that provided for in the initial advertising notice.

In all cases, the deadline for advertising provided for in paragraph 2 of Article 96 of this Decree must be respected.

Competing architects who have withdrawn or downloaded the architectural consultation file must be informed of any changes that have been made and of the new date for the opening of bids, if applicable.

In addition to the cases provided for in paragraphs 6 and 8 of this article, the corrective notice is issued in one of the following cases:

- a) When the project owner makes changes to the architectural consultation file without complying with the seven-day time limit set out above ;
- b) When the project owner decides to make changes to the architectural consultation file and these changes require additional time for the preparation of tenders;
- c) To correct manifest errors in the published notice;
- d) When the project owner finds, after publication of the notice that the period between the date of publication of the notice and the date of the bid opening session does not comply with the required deadline for advertising.

8 –If one of the competing architects considers that the period provided for in the advertising notice for the preparation of bids is insufficient, given the complexity of the services to be provided, he may, during the first half of the deadline for advertising, ask the project owner, by letter sent by any means capable of giving a certain date, to postpone the date of the bid opening session. The architect's letter must contain all information necessary for the project owner to assess the merits of his request for postponement.

If the project owner acknowledges the merits of the competing architect's request submitted to him, he will postpone the date of the bid opening session.

The postponement, the duration of which is left to the discretion of the project owner, is the subject of a corrective notice which is published in the same form as the notice of the architectural consultation.

The opening date for bids may be postponed for this reason only once, regardless of which architect requests the postponement.

Architects who have withdrawn or downloaded the architectural consultation files will be informed by the project owner of this postponement.

ART. 103. –Content of architects' files

The files submitted by architects shall include :

I) the administrative file which includes:

A. For each competing architect at the time of submission of tenders:

- 1 –The declaration of honor;
- 2 –An extract from the company statutes of the architectural firm and/or the minutes of the competent body conferring on the architect the power to bind the firm with regard to third parties;
- 3 –A certified copy of the original authorisation to practice the profession of architect issued by the competent authority;
- 4 –A certificate of registration on the roll of the National Order of Architects issued less than one year ago or a certified copy of the original.
- 5 –Supporting documents of the nationality of the architect or the directors of the architectural firm in the case of contracts awarded for national defence or public security purposes;
- 6 –Certificate of attendance at the meeting or site visit, when attendance is compulsory.

B. For the competing architect to whom it is intended to award the contract and for the architects who will receive premiums:

1 –A certificate or a certified copy of the original certificate issued less than one year by the tax collector of the place of taxation, certifying that the architect is in a regular tax situation or, in the absence of payment that he has provided the guarantees deemed sufficient by the accountant responsible for collection, in accordance with the legislation in force on the collection of public debts;

2 –A certificate or a certified copy of the original certificate issued less than one year by the National Social Security Fund certifying that the architect is in a regular tax situation with this body.

II) The technical proposal, which must contain :

1 –A presentation note including:

- a) The architectural part of the project in relation to the criteria set out in the architectural consultation regulations;
- b) The consistency of the project in relation to the architectural consultation programme;
- c) A descriptive note of the materials used.

2 –A summary outline of the project;

3 –The timetable for preparing the studies;

4 –A rough estimate, excluding taxes, of the overall cost of the works based on the project's surface area ratios.

III) The financial proposal including the act of commitment specifying the proposed fees.

This act of commitment, signed by the competing architect or his authorised representative, must include all the required information, including bank identity statement.

ART. 104. –Submission of architects' files

1 –The file to be submitted by each architect shall be placed in a sealed envelope bearing the following information :

- the name and address of the architect;
- the subject of the contract;
- the date and time of the bid opening session;
- The warning that « the envelope must only be opened by the president of the architectural consultation jury at the public bid opening session ».

2 –This envelope contains three separate envelopes:

- a) An envelope containing the documents of the administrative file provided for in article 103 above, the architect's contract and the architectural consultation regulations, initialled and signed by the competing architect and marked « read and accepted». This envelope must be closed and clearly marked « administrative file»;
- b) An envelope containing the documents of the technical proposal referred to in Article 103 above. This envelope must be closed and clearly marked « technical proposal »;
- c) An envelope containing the financial proposal. This envelope must be closed and clearly marked « financial proposal».

3 –The three envelopes referred to above shall clearly specify :

- the name and address of the architect;
- the subject of the contract;
- the date and time of the bid opening session.

ART. 105. – Submission and withdrawal of architects' bids

I) Subject to the provisions of Article 135 of this decree, architects' bids shall be either:

- 1 –Lodged, against receipt, at the project owner's office indicated in the notice of the open or simplified architectural consultation or in the circular letter for the restricted architectural consultation;
- 2 –Or sent, by registered letter with acknowledgement of receipt, to the above-mentioned office;
- 3 –Or submitted electronically via the public procurement portal;
- 4 –Or handed over, immediately, to the president of the jury at the beginning of the session and before the opening of bids.

The deadline for receipt of bids expires on the date and at the time set for the bid opening session by the notice of open or simplified architectural consultation or by the circular letter for restricted architectural consultation.

. Envelopes submitted or received after the set date and time will not be accepted.

Upon receipt, the envelopes are recorded in the order in which they were received, in the special register provided for in article 4 of this decree. The registration number and the date and time of arrival are recorded on each envelope received.

The envelopes must remain closed and kept in a safe place by the project owner until they are opened by the president of the jury, in accordance with the conditions set out in article 107 of this decree.

II) Any envelope submitted or received may be collected no later than the day of the bid opening session and before the time set for this purpose.

The withdrawal of envelopes is the subject of a written request signed by the architect and addressed to the project owner. The date and time of withdrawal are recorded by the project owner in the special register referred to in article 4 of this decree.

Architects who have withdrawn their envelopes may submit new envelopes in accordance with the procedures set out in paragraph I) above.

ART. 106. –Architectural consultation jury

In addition to the members provided for in Article 38 of this decree, the architectural consultation jury comprises the following members:

- An architect appointed by the project owner. However, if the project owner's organisation does not have an architect, he will call on an architect from another administration;
- An architect representing the ministry of urban planning. However, in the absence of the latter, after having been duly convened, the bid opening session shall be validly held.

The jury may call on any expert it deems useful to contribute to its work or set up a sub-commission.

When the architectural consultation jury decides to consult an expert, the president of the jury asks the project owner to convene the expert concerned to take part in the work of the jury or the sub-commission.

The sub-commission may not be composed exclusively of members of the jury. It must include an architect.

ART. 107. –Opening of bids in public session

1 –The architects' bid opening session is public.

It is held at the place, on the day and at the time provided for in the notice of the architectural consultation or in the circular letter. If this day is declared a public holiday or non-working day, the meeting will be held on the following working day at the same time.

The president of the jury opens the architects' bid opening session.

2 –He invites the architects present who have not submitted their bids to hand them over to him immediately. He then invites the competing architects who have discovered that their bids are incomplete to submit the missing documents in a sealed envelope marked « missing documents » and finalises the list of envelopes received.

No envelopes or additional documents may be submitted or withdrawn after this formality has been completed.

3 –The president of the jury opens the session and ensures that the members whose attendance is mandatory are present.

In cases where one or more members, whose attendance is compulsory, is/are absent, the president shall invite the members present at the bid opening session to initial, at the same time, the envelopes received, the flaps and the parts to which they are affixed.

These envelopes must remain closed and kept in a safe place by the president of the jury until they are opened.

4 –In cases where one or more members, whose attendance is compulsory, is/are absent, the president postpones the bid opening session for forty-eight hours and informs the competing architects and members of the jury of the place, date and time scheduled for resuming the public bid opening session. He then asks the project owner to send a letter to the absent member(s). This letter must specify the place, date and time of the new bid opening session.

In cases where one or more members, whose attendance is compulsory at the new session, other than the administration's architect, is/ are absent, this session shall be validly held.

If the administration's architect is absent, the president will postpone the session in the same way.

If the administration's architect is not present at the new session held following the postponement referred to above, this one shall be validly held.

Afterwards, or when the session resumes if it is postponed, the president announces aloud the references of the newspapers in which the notice of the open or simplified architectural consultation has been published, the date of its publication on the public procurement portal and, where applicable, the other media in which it has been published or the references of the circular letter for the restricted architectural consultation.

5 –The president asks the members of the jury to express any reservations or observations they may have regarding any defects in the procedure.

When the president is satisfied that the reservations or observations made are well-founded, he ends the procedure, under his responsibility, and loudly informs the competing architects present.

If, on the other hand, the president considers that the reservations or observations made are unfounded, he decides, under his responsibility, to continue the procedure and to record them in the minutes of the session.

The president opens the competing architects' envelopes and checks the existence of the three envelopes provided for in article 104 of this decree.

For each architect, the president opens simultaneously the envelope marked « administrative file » and the envelope containing the « technical proposal ». He then announces aloud the documents contained in each envelope.

He also reads out the rough estimate of the overall cost of the works proposed by each competing architect.

6 –The members of the jury shall, initial this rough estimate and the envelopes containing the architects' financial proposals, the flaps and the parts to which they are affixed.

7 –These envelopes must remain closed and kept in a safe place by the president of the jury until they are opened in accordance with the conditions set out in article 109 below.

The president sets, in consultation with the members of the jury, the date and time for the resumption of the public session and informs the competing architects and the public present. Once this formality has been completed, the public session is closed and the competing architects and the public leave the room.

At the end of this session, the president asks the project owner to post the notice stating the date and time of the next public session on his premises.

The architectural consultation jury meets behind closed doors, after examination of the documents in the administrative file, the latter excludes:

- a) Architects who do not meet the requirements laid down in Article 99 of this Decree ;
- b) Architects who have not complied with the requirements of paragraph 2) of Article 104 of this Decree with regard to the submission of their files;
- c) Architects who have not produced the required documents in the administrative file;
- d) Architects who are represented by the same person in the same contract;
- e) Architects who are not eligible to tender.

When the jury finds material errors or discrepancies in the documents of the administrative file, it will admit the tender of the architect or architects concerned, subject to the introduction of the necessary rectifications in accordance with the conditions set out in paragraph 6 of Article 110 below.

The jury then draws up the list of :

- Admitted architects;
- admitted architects, subject to the introduction of the necessary rectifications of any material errors or discrepancies in the documents of their administrative files;
- Architects not admitted.

ART. 108. –Examination and evaluation of technical proposals

Following the examination of the documents of the administrative file, the jury continues its work and examines the technical proposals submitted by the admitted architects or those admitted with reserve.

It then checks the calculations of the rough estimate of the overall cost of the works and corrects any arithmetical errors.

It excludes proposals from architects who do not comply with the specifications required by the consultation regulations or who do not meet the criteria set out therein, or who have submitted an estimate for the overall cost of the work on a project that exceeds the budget allocated by the project owner, and draws up the list of selected architects.

Before making its decision, the architectural consultation jury may consult any expert or set up a sub-commission to analyse the technical proposals. The technical sub-commission must include at least one architect in his capacity as a member of the architectural consultation jury.

The jury may request in writing from one or more architects clarification on their technical proposals. These clarifications must be limited to the documents contained in these proposals.

The assessments made by the experts or members of the sub-commission must be based on objective evidence, non-discriminatory, verifiable and duly substantiated.

When an expert or a sub-commission is called in, their conclusions are recorded in a report drawn up and signed by the expert or by the members of the sub-commission under their responsibility.

This report sets out the results of the evaluation, describing the strengths and weaknesses of the presentation note, the project outline and the timetable for preparing the studies. A score out of one hundred (100) points is awarded to all these elements on the basis of the criteria set out in the consultation regulations.

The report also rates the rough estimates, excluding taxes, of the overall cost of the works, based on the project's surface area ratios, by assigning a score of one hundred (100) points to the most advantageous estimate and marks inversely proportional to the amounts of the other rough estimates.

ART. 109. –Opening of envelopes containing financial proposals in public session

1 –The public session shall be resumed on the date and at the time announced by the president of the jury, as posted by the project owner.

Following the examination of their administrative files and their technical proposals, the president reads the list of eligible architects, without giving the reasons for the elimination of those who were not selected.

The president returns, against receipt, to the unsuccessful architects present their administrative files, technical proposals and financial proposals, with the exception of the documents which were the cause of their elimination.

2 –The president then opens the envelopes marked « financial proposal» of the admitted architects and reads out the content of the acts of commitment containing the fee proposals.

3 –The members of the jury shall initial the acts of commitment containing the fee proposals.

4 –Once this formality has been completed, the public session is closed. The competing architects and the public leave the room.

ART. 110. –Evaluation of architects' proposals behind closed doors

1 –The jury continues its work behind closed doors.

2 –The jury checks the calculations of the financial proposal, rectifies any arithmetical errors and rejects architects whose fee proposals :

- Are not signed;
- Are signed by persons not authorised to bind the architects concerned;
- Express restrictions or reservations;
- Are higher than the maximum or lower than the minimum rates provided for in Article 93 of this Decree.

3 –The jury rates the fee proposals by assigning a score out of one hundred (100) points to the most advantageous fee proposal and marks inversely proportional to the amounts of the other fee proposals.

4 –The jury evaluates the bids in order to select the most advantageous bid. To this end, it weights the scores obtained by each architect on the basis of the technical proposal, the rough estimate, excluding taxes, of the overall cost of the works based on the project's surface area ratios and the fee proposal.

The overall score will be obtained by adding together the technical score, the rough estimate score and the financial score, after applying a weighting as follows:

- Seventy percent (70%) for the technical proposal ;
- twenty percent (20%) for the rough estimate;
- Ten percent (10%) for the fee proposal.

The architect with the highest overall score is awarded the contract.

5 –The jury will rank the proposals submitted by the selected architects with a view to proposing the most advantageous tender to the project owner. In the event that several bids, judged to be the most advantageous, have obtained equivalent overall scores, the jury will select the architect who has obtained the best score for the technical proposal. If the scores for the technical proposals are also equivalent, the jury will draw lots to designate the architect to be selected.

6 –By registered letter with acknowledgement of receipt, the president of the jury shall invite the competing architect who has submitted the most advantageous offer to :

- Produce the documents of the administrative file referred to in subparagraph B of paragraph I) of article 103 of this decree ;
- Confirm the corrections of material errors found, if applicable.
- Address any discrepancies noted between the various documents in his file, where applicable.

To this end, the jury shall set a time limit which may not be less than seven days from the date of receipt of the letter referred to above.

7 –The jury meets on the day and at the time set. However, the president may invite the members of the jury to resume its work as soon as responses from the architects concerned have been received.

The jury checks the existence of the medium used to invite the architect concerned and verifies the responses and documents received.

After examining the documents and responses received, the jury decides:

- a) Whether to propose to the project owner to accept the proposal of the architect concerned,
- b) Or to disqualify the architect concerned, when the latter :
 - Does not reply within the time limit given to him;
 - Does not produce the required documents or produces non-conforming documents;
 - Does not confirm the rectification of material errors requested, where applicable ;
 - Fails to rectify discrepancies between the various documents in his file, if applicable.

If the jury excludes the architect concerned in one of the cases referred to in b) above, it invites, in the same way, the architect whose bid is ranked second.

It shall examine the documents and responses received and shall decide whether to accept or reject the bid.

If the jury does not retain the tender of the architect concerned, it will invite the architect whose offer is ranked next and will examine his responses and documents in accordance with the provisions of this paragraph, until the procedure has been completed or the architectural consultation has been declared unsuccessful.

With a view to awarding the architects the prizes provided for in the consultation programme, the jury invites, by registered letter with acknowledgement of receipt, the competing architects whose bids are ranked next after the bid of the architect awarded the contract, to produce the documents and responses provided for in paragraph 6 of this article.

ART. 111. –Unsuccessful architectural consultation

The jury declares the architectural consultation unsuccessful in one of the following cases:

- a) If no tender has been submitted or lodged ;
- b) If no competing architect has been selected after examination of the administrative files;
- c) If no competing architect has been selected after examination of the technical and financial proposals.

The declaration of the architectural consultation as being unsuccessful for the reason set out in a) above may only justify recourse to the negotiated architectural consultation if this consultation has been declared unsuccessful after having been issued a second time for the same reason.

ART. 112. –Minutes of the tender examination session

The architectural consultation jury draws up, immediately, minutes of each of its meetings.

These minutes, which are neither made public nor communicated to the competing architects, mention the maximum estimated budget drawn up by the project owner, mention where applicable any observations made by the members of the jury during the tender examination process and state their points of view on these observations.

The minutes shall also state the reasons for excluding the excluded competing architects and the criteria on which the jury based its proposal to the project owner to select the tender he judges to be the most advantageous in the light of the criteria set out in the consultation regulations.

The minutes are immediately signed by the president and the members of the jury.

Any report drawn up by the sub-commission or expert, as appropriate, is attached to the minutes of the tender examination session.

An extract from the minutes is published on the public procurement portal and posted within the premises of the project owner's organisation within twenty-four hours following the date of completion of the jury's work. This extract must be posted for at least fifteen days.

ART. 113. –Final results of the architectural consultation

1 –The project owner shall inform the selected architect of the acceptance of his tender by registered letter with acknowledgement of receipt or by any other means capable of providing a certain date, no later than the third day following the date on which the architectural consultation jury completes its work.

Within the same time limit, he shall inform the excluded architects, by registered letter with acknowledgement of receipt, that their tenders have been rejected, giving all the reasons for their elimination. This letter shall be accompanied by the documents contained in their files.

However, the documents that led to the disqualification of competitors are kept by the project owner for a minimum period of five years, with the exception of the technical proposal documents.

2 –No architect may claim compensation if his tender has not been accepted.

3 –The choice made by the architectural consultation jury may not, under any circumstances, be changed by the project owner or the competent authority.

ART. 114. –Cancellation of the architectural consultation

The cancellation of the architectural consultation is carried out in accordance with the provisions of article 48 of this decree.

Subsection II. – Architectural competition**ART. 115. –Architectural competition principles and terms**

1 –The architectural competition is a procedure that enables the project owner to choose, after receiving a proposal from the competition jury, the design for a project and to entrust its author with the monitoring and control of its execution.

2 –The architectural competition is organised on the basis of a programme drawn up by the project owner.

3 –The competition includes a public call for competition. Any architect wishing to take part may submit a project.

4 –The projects submitted by the architects are examined and ranked by the competition jury.

5 –In accordance with the provisions of article 128 of this decree, only architects whose projects are ranked first by the competition jury, including the holder of the contract, are eligible for bonuses.

6 –The competition shall include the opening of bids in a public session.

ART. 116. –Architectural competition programme

1 –The architectural competition shall be the subject of a programme which shall identify the needs to be met by the project and shall set out the estimated consistency of the services to be provided and the maximum estimated budget for the implementation of the said project.

2 –The competition programme shall also include the following elements:

- a) A statement of the objective sought by the competition and an outline of the important aspects to be taken into account, especially the technical, functional, aesthetic and financial aspects ;
- b) A detailed definition of the project's components and consistency;
- c) A description of the context in which the project is being carried out, together with a statement of the town planning laws and regulations applicable to the project.

3 –This programme shall be accompanied by :

- Topographical surveys of the project site ;
- Preliminary geotechnical studies likely to provide the architect with information on the planned project;
- A document attesting to the sanitation of the land subject to the project;
- Dimensional drawings;
- The information note issued by the relevant urban agency;
- Any other document relating to the project, as provided for by law no. 66-12 on the control and punishment of offences in town planning and construction.

4 –The programme provides for the allocation of premiums to the five top-ranked projects among those selected, and sets the amount of these premiums.

The amount of the premium awarded to the winner will be deducted from the fees due to him under the contract for the design, monitoring and control of the implementation of the project.

ART. 117. –Advertising of the architectural competition

The architectural competition shall be publicised in accordance with the provisions of Article 96 of this Decree.

However, the notice of the architectural competition must be published at least forty days before the date set for the receipt of projects. This period runs from the day after the date of publication of the notice in the last publication medium.

ART. 118. –Requests for information from competitors

The provisions of Article 97 of this decree shall apply to requests for information from competing architects and to the responses given to them by the project owner.

ART. 119. –Architectural competition rules

The architectural competition shall be subject to competition rules established by the project owner. These rules set out the conditions for the submission of bids in such a way as to safeguard the anonymity of the architects' proposals and the procedures for the award of the contract.

The architectural competition rules shall include, in particular:

I) During the project evaluation phase:

The criteria for selecting and ranking bids in order to award the contract to the architect who submitted the most advantageous bid. These criteria vary according to the subject of the contract. They relate to :

A. The quality of the technical proposal:

- a) From the point of view of the originality, relevance and creative intelligence of the architectural part, the integration of the project into the site and compliance with town planning laws and regulations;
- b) From the point of view of environmental protection and sustainable development, the development of renewable energies and energy efficiency, the preservation of water resources, compliance with construction standards and the use of products of Moroccan origin, especially artisanal products;
- c) With regard to the requirements of the competition programme concerning compliance with the surface of the various components of the programme, comfort and safety standards and regulations, the quality of distribution and flows and accessibility for people with reduced mobility;
- d) From the point of view of technical feasibility concerning the quality of the constructive part, the quality of the horizontal and vertical circulation devices and the quality of the infrastructure.

B. Optimisation of project costs and completion times, covering :

- a) A rough estimate, excluding taxes, of the overall cost of the project to be carried out ;
- b) The timetable for preparing the studies

C. The architect's fee proposal.

II) During the premium allocation and contract award phase:

- the list of documents to be provided by architects in accordance with article 100 of this decree;
- the eligibility criteria for architects, taking into account their legal capacities.

III) The language(s) in which the documents contained in the files and the bids submitted by the competing architects must be drawn up;

IV) The conditions for safeguarding and lifting anonymity.

V) The competition rules must be signed by the project owner and an architect from the administration before launching the competition procedure.

ART. 120. –Architectural competition file

1 –The architectural competition shall be the subject of a file drawn up by the project owner, which shall include :

- A copy of the competition notice;
- The competition programme;
- A copy of the architect's contract;
- Plans and technical documents, where applicable;
- The model of the act of commitment;
- The model of the declaration of the architect's identity as provided for in Article 124 of this Decree;
- The model of the declaration of honor;
- The consultation regulations.

2 –The competition files must be sent by the project owner to the members of the competition jury under the conditions set out in paragraph 2 of article 102 of this decree.

3 –The architectural competition files need to be available prior to publication of the competition notice and must be made available to competitors from the first publication of the architectural competition notice in one of the publication media provided for in article 96 of this decree and until the deadline for submission of competitors' bids.

4 –The names of architects who have withdrawn or downloaded the competition file shall be entered in the special register provided for in Article 4 of this Decree, with an indication of the date and time of withdrawal or downloading.

5 –The competition files are given to architects in accordance with the provisions of paragraphs 5 and 6 of Article 102 of this decree.

6 –Exceptionally, the project owner may make changes to the architectural competition file, without changing the subject of the competition.

These changes are communicated by the project owner to all the candidates who have withdrawn or downloaded this file and made available to the other competing architects.

These changes may be made at any time during the initial deadline for advertising and no later than ten days before the date scheduled for holding the bid opening session.

When the changes made require the postponement of the date scheduled for holding the bid opening session, this postponement shall be the subject of a notice published in accordance with the provisions of Article 102 of this Decree.

7 –If one of the architects considers that the period provided for in the advertising notice for the preparation of bids is insufficient, given the complexity of the services to be provided, he may, during the first half of the deadline for advertising, ask the project owner, to postpone the date of the bid opening session in accordance with the provisions of paragraph 8 of article 102 of this decree.

ART. 121. –Conditions required from architects

The provisions of article 99 of this decree shall apply to the conditions required from architects in order to participate in the architectural competition.

ART. 122. –Architectural competition jury

The composition of the architectural competition jury shall be determined in accordance with the provisions of Article 106 of this Decree.

ART. 123. –Safeguarding and lifting of anonymity

Projects proposed by architects shall be submitted under conditions and in forms that safeguard anonymity.

The project owner ensures the codification of the projects proposed by the architects.

Anonymity must be preserved until the jury removes it.

To this end, the architectural competition rules set out the conditions for submitting bids in such a way as to safeguard the anonymity of the architects' proposals.

The conditions for safeguarding, codification and lifting of anonymity are set out in articles 124 to 127 below.

ART. 124. – Content, presentation and submission of architects' files

I) content of architects' files:

The file submitted by each architect shall include the following documents:

A. The declaration of the architect's identity, duly completed and signed; ;

B. The technical proposal including:

1 –A site plan showing the location and massing of the footprints of the buildings to be constructed in relation to public rights-of-way and any rights of way for public facilities provided for in town planning schemes;

2 –Architectural plans at the appropriate scales showing the various levels, assemblies, sections and facades, as well as any other architectural drawings that the architectural competition rules require to be included with the competing architect's service, relating in particular to perspectives, simulation on the site and renderings of ambience. These architectural plans must be presented in the format specified in the architectural competition rules;

3 –The presentation note, which describes, explains and justifies the competitor's project, listing the works to be carried out and indicating their functional characteristics, their distribution and their connections in space. It also includes a brief description of the technical and finishing services proposed, as well as a table of useful surfaces and surfaces excluding works.

C. The rough estimate, excluding taxes, of the cost of the project established based on a calculation of the surfaces and the technical and finishing services proposed.

D. The architect's draft contract initialled and signed by the architect.

E. The act of commitment setting the rate of fees proposed by the architect.

This act of commitment, signed by the competing architect or his duly authorised representative, must include all the required information, including the bank identity statement.

II) Submission of the architects' files:

The file submitted by each architect must be placed in a packaging together with a sealed envelope containing the declaration of the architect's identity duly completed and signed by the competing architect or by the person authorised by him for this purpose.

The packaging and envelope referred to above must not contain any mentions or distinctive signs.

The packaging contains three envelopes:

1 –The first envelope is marked « project » and contains the technical proposal.

2 –The second envelope is marked « estimate» and contains :

–The rough estimate of the cost of the project ;

–the timetable for preparing the studies.

3 –The third envelope is marked « financial proposal » and contains :

- the architect's contract and the competition rules signed and initialled by the competing architect or the person authorised by him to do so and marked « read and accepted »;
- The act of commitment fixing the rate of fees.

III) Submission of architects' files:

The architects' files must either be lodged, against receipt, at the project owner's office indicated in the competition notice, or sent by registered letter with acknowledgement of receipt to the aforementioned office.

Architects may not submit their files before the expiration of the deadline given to the project owner to introduce any changes to the competition file in accordance with the provisions of paragraph 6 of article 120 of this decree.

Architects' files submitted or received after the date and time set in the competition notice for the bid opening session will not be accepted.

Upon receipt, the architects' files are recorded by the project owner in the order in which they were received, in the special register provided for in article 4 of this decree.

A code is assigned and marked on the packaging and envelope containing the declaration of identity submitted by the architect.

The packaging and envelopes must remain closed and kept in a safe place by the project owner until they are opened by the competition jury under the conditions set out in article 126 of this decree.

The envelopes containing the architects' declarations of identity and bearing the codes are placed in a separate envelope by the project owner.

Files submitted or received may not be withdrawn, completed or modified.

ART. 125. –Opening of packages containing projects proposed by competing architects

1 –The opening session of the packages containing the projects proposed by the architects is public.

It is held at the place, on the day and at the time provided for in the competition notice. If this day is declared a public holiday or non-working day, the session will be held on the following working day at the same time.

2 –The president of the jury opens the session and ensures that the members whose attendance is compulsory are present.

In cases where one or more members, whose attendance is compulsory, is/are absent, the president shall invite the members present at the package opening session to initial, at the same time, the packages received, the flaps and the parts to which they are affixed. These packages must remain closed and kept in a safe place by the president of the jury until they are opened.

The president then postpones the package opening session for forty-eight hours and informs the competing architects and members of the jury present of the place, date and time

scheduled for resuming the public package opening session. He then asks the project owner to send a letter to the absent member(s). This letter must specify the place, date and time of the new package opening session.

In cases where one or more members, whose attendance is compulsory at the new session, other than the administration's architect, is/ are absent, this session shall be validly held.

However, if the administration's architect is absent, the president will postpone the session in the same way.

If the administration's architect is not present at the new session held following the postponement referred to above, this one shall be validly held.

3 –Afterwards, or when the session resumes if it is postponed, the president announces aloud the newspapers in which the competition notice has been published, the date of publication on the public procurement portal and, where applicable, the references of other media in which the architectural competition notice has been published.

4 –The president shall ensure that each package received bears the anonymity code.

5 –The president also ensures that the envelopes bearing the anonymity code and containing the architects' declarations of identity are enclosed.

These envelopes are placed in an envelope which the members of the jury initial, at the same time, the flaps and the parts to which they are affixed. This envelope must remain closed and kept in a safe place by the president of the jury until it is opened in accordance with the conditions set out in paragraph 7 of article 126 below.

6 –The president opens the packages and checks that the envelopes provided for in II) of Article 124 above are present in each of them. He writes the code mentioned on the package on the three envelopes.

7 –The members of the jury initial, at the same time, the envelopes marked «financial proposal», the flaps and the parts to which they are affixed. These envelopes must remain closed and kept in a safe place by the president of the jury until they are opened in accordance with the conditions set out in article 127 of this decree.

Once this formality has been completed, the public session ends. The competing architects and the public leave the room.

ART. 126. –Evaluation of architects' projects behind closed doors

1 –The competition jury continues its work behind closed doors.

2 –The president opens the envelopes marked «estimate», checks that the required documents are enclosed to each of them and announces, out loud, the amount of each estimate.

3 –The jury checks the architects' estimates against the maximum estimated budget set by the project owner for the service to be carried out, and rejects projects whose estimates exceed this budget.

4 –The jury will then open the envelopes marked « project », with the exception of those relating to projects rejected for the reason given in paragraph 3 above.

5 –The jury then assesses and ranks the projects on the basis of the criteria set out in the competition rules. It may consult any expert who may be able to enlighten it on particular points of the proposed projects. Before making its decision, it may also set up a sub-commission to analyse the projects. The sub-commission must include at least one architect in his capacity as a member of the architectural consultation jury.

A score out of one hundred (100) points is awarded to each technical proposal.

6 –The jury then assesses the rough estimates of the overall cost of the works and the timetable for preparing the studies on the basis of the criteria set out in the competition rules. A score of one hundred (100) points is awarded to the most advantageous estimate.

This score is distributed as follows:

–Eighty (80) points for the estimate of the overall cost of the works, to the most advantageous estimate and marks inversely proportional to the amounts of the other rough estimates.

–Twenty (20) points for the timetable for preparing the studies.

The jury rejects projects that do not meet the criteria set out in the competition rules and draws up the list of admitted projects.

7 –The competition jury removes the anonymity. It opens the envelope containing the envelopes containing the architects' declarations of identity.

8 –The jury draws up the list of architects whose projects have been selected and the list of architects whose projects have been rejected.

9 –In concertation with the members of the jury, the president shall set the date and time for the new public session.

At the end of this session, the president asks the project owner to post the date and time of the next public session on his premises and to inform, in writing, the architects who have submitted their bids.

ART. 127.– Opening of envelopes containing the financial proposals in public session

1 –The public session is resumed on the date and at the time set in accordance with the provisions of paragraph 9 of article 126 above.

2 –The president reads the list of architects whose projects have been accepted, without giving the reasons for the elimination of architects whose projects have been rejected.

The president returns, against receipt, to the unsuccessful architects, their files, with the exception of the documents which were the cause of their elimination.

3 –The president then opens the envelopes of the admitted architects marked « financial proposal » and announces, out loud, the documents contained in each envelope, the identity of the architect and the rate of fees mentioned in his act of commitment.

The members of the jury initial the acts of commitment containing the proposed fee rate.

Once this formality has been completed, the public session ends. The public and the competing architects leave the room.

ART. 128. –Evaluation of financial proposals behind closed doors

1 –The competition jury meets behind closed doors and verifies that the architect's contract has been initialled and signed by the architect or by the person duly authorised to bind him. It rejects architects whose contracts are not signed or are signed by persons not authorised to bind them.

2 –The jury then verifies the acts of commitment and excludes architects whose acts of commitment:

- Are not signed;
- Are signed by persons not authorised to bind the competing architects concerned;
- Express restrictions or reservations;
- Have fee rates higher than the maximums or lower than the minimums provided for in article 93 of this decree.

3 –The jury rates the fee proposals by assigning a score out of one hundred (100) points to the most advantageous fee proposal and marks inversely proportional to the amounts of the other fee proposals.

4 –The jury evaluates the bids in order to rank them and select the most advantageous bid. To this end, it weights the scores obtained by each architect on the basis of the technical proposal, the rough estimate of the overall cost of the works, the timetable for preparing the studies and the fee proposal.

The overall score will be obtained by adding together the technical score, the rough estimate score and the financial score, after applying a weighting as follows:

- Seventy percent (70%) for the technical proposal;
- Twenty percent (20%) for the rough estimate of the overall cost of the works and the timetable for preparing the studies;
- Ten percent (10%) for the fee proposal.

5 –The jury then ranks the competing architects according to the most advantageous bid.

6 –Following this ranking, the president of the competition jury invites, by registered letter with acknowledgement of receipt, the competing architects concerned to :

- Produce the documents of the administrative file provided for in Article 100 of this decree;
- Confirm the corrections of material errors found, if applicable.

To this end, the jury sets a deadline of at least seven days from the date of receipt of the letter of invitation.

7 –The president of the jury suspends the session and sets the date and time for resuming its work.

8 –The competing architects' responses must be submitted in a sealed envelope, which shall clearly include the following information:

- the name and address of the architect;
- the subject of the competition;

- the mention « administrative file »;
- the warning that « this envelope must only be opened by the president of the competition jury».

This envelope must either be lodged, against receipt, at the project owner's office indicated in the letter of invitation, or sent by registered letter with acknowledgement of receipt, to the aforementioned office.

The deposit of this envelope is recorded in the special register provided for in article 4 of this decree.

9 –The jury meets on the day and at the time set. However, the president may invite the members of the jury to resume its work as soon as responses from the architects concerned have been received.

The jury checks the existence of the medium used to invite the architects concerned and verifies the documents and responses received.

After examining the documents and responses received, the jury:

a) Rejects any architect who:

- Fails to reply within the given time limit;
- Does not produce the required documents or produces non-conforming documents;
- Does not confirm the rectification of material errors requested,

b) Establishes the final ranking of architects on the basis of their projects and proposes to the project owner to select the project ranked first and award a prize to the five top ranked candidates.

10 –Premiums will not be awarded to architects who have been excluded, in accordance with the provisions of subparagraph a) of paragraph 9 of this article.

11 –The ranking proposed by the jury may not be changed under any circumstances.

ART. 129. –Unsuccessful architectural competition

The jury shall declare the competition unsuccessful in one of the following cases:

- a) If no tender has been submitted or lodged ;
- b) if no architect has been selected at the end of the project evaluation phase;
- c) if no architect has been admitted following the evaluation of the rough estimate, excluding taxes, of the overall cost of the project;
- d) if no tender has been accepted following examination of the administrative files.

If an architectural competition is declared unsuccessful, this does not justify recourse to the negotiated architectural consultation.

ART. 130. –Minutes of the architectural competition

The architectural competition jury draws up, immediately, minutes of each of its meetings. These minutes, which are neither made public nor communicated to the architects, shall mention the maximum estimated budget for the implementation of the project, the observations made, if any, by the members of the jury during the tender examination process and state the point of view of the jury on these observations.

The minutes shall also state the reasons for excluding the excluded architects and the precise elements on which the jury based its decision to select the tender, it judges to be the most advantageous to be submitted to the project owner, in the light of the criteria set out in the architectural competition rules.

The minutes are immediately signed by the president and the members of the jury.

Any report drawn up and signed, under their responsibility, by the members of the sub-commission or the expert is attached to the minutes of the tender examination session, if applicable.

An extract from the minutes is published on the public procurement portal and posted within the premises of the project owner's organisation within twenty-four hours following the date of completion of the jury's work. This extract must be posted for at least fifteen days.

ART. 131. –Final results of the architectural competition

The provisions of Article 113 of this decree shall apply to the architectural competition.

ART. 132. –Cancellation of the architectural competition

The cancellation of the architectural competition shall take place under the same conditions as those laid down in Article 48 of this decree.

If the competition is cancelled, the project owner shall award the prizes provided for in the competition programme to the top-ranked competitors.

Subsection III. – Negotiated architectural consultation

ART. 133. –Use of the negotiated architectural consultation

I) Principles

1 –The negotiated architectural consultation is a method of awarding contracts whereby a negotiation jury, set up for this purpose, selects the successful tenderer after consulting one or more competing architects and negotiating the terms of the contract.

These negotiations especially concern the rates of fees and the deadlines for carrying out the service. They may not, under any circumstances, relate to the subject of the negotiated architectural consultation or to the programme drawn up by the project owner.

2 –The members of the negotiation jury are appointed by the project owner. This jury, chaired by the project owner or his deputy, is made up of two representatives from the project owner's organisation, one of whom is an architect.

However, if this organisation does not have an architect, the project owner will call on an architect from any other administration, in an advisory capacity.

The negotiation jury may call on any expert it deems useful to contribute to its work

When the negotiation jury decides to consult an expert, the president of the jury asks the project owner to convene the expert concerned to take part in the work of the jury or sub-commission.

3 –Any competing architect must provide, at the time of his application, an administrative file consisting of all the documents provided for in article 100 of this decree.

4 –A report on the negotiations is drawn up and signed by the members of the negotiation jury. This report is attached to the contract file.

This report must, in particular, include the list of the architects consulted, those who have submitted bids and those with whom negotiations were entered into, the subject of these negotiations, the evaluation of their technical proposals, the amounts of their bids and the reasons for the choice of the selected architect.

5 –The conclusion of the negotiated architectural consultation contract shall give rise to the drawing up, by the project owner, of an administrative certificate relating to the head of exception justifying, according to this procedure, the conclusion of the contract and explaining, in particular, the reasons that, in this particular case, led to its application.

6 –The competent authority may, by reasoned decision, terminate the negotiated procedure at any time. This decision is placed in the contract file.

II) Cases of recourse to the negotiated architectural consultation:

Negotiated architectural consultation contracts are awarded :

- Either after publication and competitive tendering;
- Or without publication and competitive tendering.

Negotiated architectural consultations with prior publicity and competitive tendering are awarded in accordance with the provisions of paragraph III) of this article.

Negotiated architectural consultations without prior publicity and competitive tendering are awarded following negotiation of the terms of the contract by the negotiation jury with the architect or architects consulted.

These negotiations shall be the subject of the report referred to in subparagraph 4 of paragraph I) of this article.

1 –The following services may be the subject of a negotiated architectural consultation after publication and competitive tendering:

- a) Services that have been the subject of a negotiated architectural consultation that has been declared unsuccessful. In this case, the initial conditions of the architectural consultation must not be modified in any way and the period between the date on which the procedure was declared unsuccessful and the date of publication of the negotiated architectural consultation notice must not exceed twenty-one days;
- b) Services that the project owner arranges for another architect to carry out under the conditions set out in the original contract, following the default of his contractor.

2 –The following services may be the subject of a negotiated architectural consultation without publication and competitive tendering:

- a) Services that the needs of national defence or public security require to be kept secret. Such consultations must first be authorised, on a case-by-case basis, by the Head of Government on the basis of a special report drawn up by the competent authority concerned;
- b) Services to be carried out in cases of extreme urgency resulting from circumstances unforeseeable by the project owner and for which he is not responsible, and whose execution is not compatible with the deadlines required for prior publicity and competitive tendering.

The purpose of these services is to deal with, in particular, a shortage or the occurrence of a catastrophic event such as an earthquake, floods, tidal wave, drought, epidemic, pandemic, epizootic, devastating plant diseases, locust invasion, fire, or buildings, dilapidated dwellings and structures threatening ruin, or the occurrence of an event endangering the security of networks and installations or the health of the consumer or animal or natural heritage.

Contracts for these services must be strictly limited to the requirements necessary to deal with the emergency situation.

III) Terms of the negotiated architectural consultation after publication and competitive tendering:

1 –The negotiated architectural consultation after publication and competitive tendering shall be the subject of a notice of the call for competition published in at least one nationally circulated newspaper chosen by the project owner and on the public procurement portal.

At the same time, this notice may be brought to the attention of potential architects and, where appropriate, professional bodies, by inserting it in specialised publications or by any other means of advertising.

2 –The advertising notice shall specify :

- The subject of the contract;
- The project owner carrying out the negotiated architectural consultation;
- The address and office of the project owner where the contract file may be collected;
- The documents to be provided by architects;
- The address and office of the project owner where architects' bids may be submitted or addressed;
- The deadline for submitting applications.

3 –The period between the date of publication of the advertising notice in the latest publication medium and the deadline for receipt of applications shall be at least ten days.

4 –The negotiated architectural consultation file after publication and competitive tendering includes:

- Programme of the negotiated architectural consultation;
- A copy of the architect's draft contract;
- Architectural consultation regulations;
- Plans and technical documents, where applicable;
- The model of the act of commitment;
- The model of the declaration of honor.

5 –Application files must contain the documents provided for in article 103 of this decree and be submitted in accordance with the conditions provided for in article 104 of the same decree.

The application file shall be placed in a sealed envelope. It must either be lodged, against receipt, at the project owner's office, or sent by registered letter with acknowledgement of receipt.

6 –After receipt of the competitors' files, the negotiation jury examines the administrative files and draws up the list of admitted competitors whose legal capacities are deemed sufficient.

The number of competing architects admitted to negotiate may not be less than three, unless the number of competitors admitted is less than three.

The negotiation jury then begins negotiations with each of the admitted competing architects, however many there may be.

7 –At the end of these negotiations, the contract shall be awarded to the competing architect who submitted the most advantageous tender in accordance with the provisions of article 110 of this decree.

IV) Reciprocal commitments relating to negotiated architectural consultations are concluded on the basis of the act of commitment and the architect's contract.

Chapter VI

Dematerialisation of procedures, documents and materials

ART. 134. –Documents to be published on the public procurement portal

The public procurement portal is managed by the General Treasury of the Kingdom.

A. The following documents shall be published on the public procurement portal:

- a) The laws and regulations governing public contracts;
- b) The opinions of the National Commission for Public Procurement;
- c) Forward contract programmes and their updates;
- d) The advertising notices and corrective notices relating thereto provided for in this Decree ;
- e) The notice of calls for expressions of interest;
- f) Notices of electronic reverse auctions;
- g) Tender documents and amendments thereto;
- h) Minutes of meetings or site visits;
- i) Extracts from the minutes of the tender examination sessions;
- j) The results of calls for tenders, negotiated contracts with prior publicity and competitive tendering, competitions, architectural consultations, architectural competitions and negotiated architectural consultations and purchase orders;
- k) Decisions to cancel the procedure;
- l) Contract presentation reports;
- m) Contract completion reports;
- n) Decisions to exclude from participation in public contracts or architects' contracts;
- o) Decisions to withdraw company qualification and classification certificates, the certificate of approval relating to project management and the authorisation to practice, especially for architects;
- p) Summaries of control and audit reports;
- q) The list of agreements or contracts under ordinary law provided for in Article 4 of this decree;
- r) The list of purchase orders provided for in Article 91 of this Decree ;

s) The list of public contracts awarded to very small, small and medium-sized enterprises, cooperatives, cooperative unions and self-employed entrepreneurs, as provided for in Article 148 of this Decree.

The list of documents referred to above may be amended or supplemented by order of the Minister of Finance.

B. Where the public procurement procedure is dematerialised, the details referred to in 1 to 7 below and indicated in the advertising notices and the related corrective notices referred to in d) above are replaced by the following: « the address of the public procurement portal where the files can be downloaded and where competitors' bids can be submitted electronically »:

1 –c), d) and e) of Article 23 of this Decree with regard to the notice of open call for tenders and the circular with regard to the restricted call for tenders;

2 –c), d) and f) of article 50 of this decree with regard to the advertising notice of the call for tenders with preselection;

3 –c), d) and e) of article 68 of this decree with regard to the advertising notice of the competition;

4 –c) and e) of Article 88 of this Decree with regard to the advertising notice of the negotiated procedure with prior publicity and competitive tendering;

5 –Subparagraph c) of paragraph 4) and paragraph 5) of Article 91 of this Decree with regard to the advertising notice of the purchase of purchase orders;

6 –d), e) and f) of article 96 of this decree with regard to the advertising notice of the architectural consultation;

7 –paragraph 2) of III) of article 133 of this decree with regard to the advertising notice of the negotiated architectural consultation.

ART. 135. –Electronic submission and withdrawal of competitors' envelopes and bids

The submission and withdrawal of competitors' envelopes and bids shall be carried out electronically via the public procurement portal.

The conditions and procedures for applying the provisions of this article are set by order of the Minister of Finance, adopted after obtaining the opinion of the National Commission for Public Procurement.

ART. 136. –Opening of bids and evaluation of competitors' bids by electronic means

The opening of bids and the evaluation of competitors' bids by electronic means shall be carried out in accordance with the following provisions:

1 –Articles 39 to 44 of this decree with regard to open and restricted calls for tenders, with the exception of paragraphs 2 and 4 and subparagraph b) of paragraph 13 of article 39 and paragraph 3 of article 42;

2 –Article 64 of this decree with regard to the call for tenders with pre-selection, with the exception of paragraphs 2 and 5 and sub-paragraph c) of paragraph 6 of this article;

3 –Articles 81 and 82 with regard to the competition, with the exception of paragraph 2 of Article 81;

4 –Article 88 with regard to the negotiated procedure;

5 –Articles 107 to 110 with regard to architectural consultation, with the exception of paragraphs 2, 3 and 6 of article 107 and paragraph 3 of article 109.

The conditions and procedures for applying the provisions of this article are set by order of the Minister of Finance, adopted after obtaining the opinion of the National Commission for Public Procurement.

ART. 137. –Electronic database of entrepreneurs, suppliers and service providers

The electronic database of entrepreneurs, suppliers and service providers shall be domiciled at the General Treasury of the Kingdom, which shall be responsible for its management.

This database contains information and electronic documents related to entrepreneurs, suppliers and service providers and to their legal, financial and technical capacities provided for by this decree.

The procedures for maintaining and using the electronic database are set by order of the Minister of Finance, adopted after obtaining the opinion of the National Commission for Public Procurement.

ART. 138. –Electronic reverse auction procedure

The electronic reverse auction is a procedure for selecting bids submitted electronically, which allows competitors to revise their proposed prices downwards as the electronic auction progresses, within the time limit set for the auction.

The project owner may use an electronic reverse auction for supply contracts. These supplies must be previously described in a precise manner.

The use of electronic reverse auctions must comply with the rules of prior advertising.

To this end, the project owner must publish a notice of the electronic reverse auction on the public procurement portal for a period of at least ten days. This notice must state, in particular, the subject of the electronic auction, the conditions required from competitors, the procedures for participating in the auction and the minimum number of competitors.

At the end of the electronic auction, the project owner selects the lowest bid from the competitor who is declared the winner of the contract to be concluded.

The conclusion of the contract resulting from the electronic reverse auction procedure shall be subject to the rules and conditions laid down in this decree.

The terms and conditions for the use and implementation of electronic reverse auctions are set by order of the Minister of Finance, adopted after obtaining the opinion of the National Commission for Public Procurement.

ART. 139. –Purchase from electronic catalogues

For the purchase of supplies, the project owner may require competitors to submit their bids in the form of electronic catalogues.

Subject to compliance with the principles laid down in Article 1 of this Decree, the submission of bids in the form of electronic catalogues shall be the subject of a consultation launched by the project owner.

The terms and conditions for submitting bids via electronic catalogues are set by order of the Minister of Finance, adopted after obtaining the opinion of the National Commission for Public Procurement.

ART. 140. –Interoperability with third-party systems

Information and data relating to certain documents in competitors' files from third-party systems may be consulted, on the public procurement portal, by the bid opening commission.

The terms and conditions for applying these provisions are set by order of the Minister of Finance, adopted after obtaining the opinion of the National Commission for Public Procurement.

ART. 141. –Dematerialisation of documents and materials

The preparation, storage and transmission of the documents and materials provided for in this decree may be dematerialised.

The signature on dematerialised documents and materials takes the form of a scanned or electronic signature.

The conditions and procedures for dematerialising the documents and materials provided for in this decree are set by order of the Minister of Finance, adopted after obtaining the opinion of the National Commission for Public Procurement.

Chapter VII
Approval of contracts

ART. 142. –Principles and procedures

Contracts awarded by the State and local authorities shall not be valid and final until they have been approved by the competent authority.

Contracts awarded by public institutions shall not be valid and final until they have been approved by the competent authority and endorsed by the State Controller where such endorsement is required.

Contracts awarded by legal entities governed by public law referred to in article 2 of this decree shall not be valid and final until they have been approved by the competent authority.

Contracts must be approved before any start of their performance, with the exception of the case provided for in b) of article 90 of this decree.

Approval of the contracts must not be affixed by the competent authority until after the expiry of a waiting period of fifteen days from the day following the date of completion of the work of the bid opening commission or the date of signature of the contract by the successful tenderer when the contract is a negotiated contract.

ART. 143.– Deadline for notification of approval

Approval of the contract must be notified to the successful tenderer within a maximum period of sixty days from the date of opening of the bids or from the date of signature of the contract by the successful tenderer in the case of a negotiated contract.

When the period of validity of bids is extended in accordance with the provisions of article 36 of this decree, the deadline for notification of approval referred to in the first subparagraph above is extended by an additional period which may not exceed the period of extension of validity of bids set by the project owner and accepted by the competitors.

Without prejudice to the provisions of article 36 of this decree, the project owner may, where appropriate, ask the successful tenderer to extend the validity of his tender for a further period not exceeding thirty days. To this end, he sets a deadline for him to submit his response.

This request must be sent to the successful tenderer, before the expiry of the validity period, by registered letter with acknowledgment of receipt.

The successful tenderer, after having been duly notified, must submit his response, by any means that can give a certain date, before the expiry of the deadline set by the project owner.

If the successful tenderer accepts the proposed new deadline, he remains committed to the project owner for the duration of the new deadline.

If the successful tenderer does not agree to the request to extend the period of validity of his tender or if he does not respond within the time limit set by the project owner, his provisional bail will be released no later than forty-eight hours from the date of receipt of the successful tenderer's response or on expiry of the time limit set. In this case, the procedure is cancelled.

In the event of failure to notify approval of the contract during the period allowed, or of the extended contract where applicable, the project owner shall draw up a report explaining the reasons for the non-approval or non-notification of the contract. This report shall be placed in the contract file.

Chapter VIII Special provisions

ART. 144. –Study contracts**A. Principles and procedures:**

When the project owner cannot carry out the necessary studies by his own means, he may have recourse to study contracts.

The purpose, scope and deadline for the execution of study contracts must be clearly defined to enable competitive tendering between service providers.

Unless authorised by the Head of Government, study contracts cannot, under any circumstances, have as their object the preparation of draft legislative or regulatory texts.

Study contracts may include a preliminary phase known as « definition phase » to determine the goals and performances to be reached, the techniques to be used or the personnel and material resources to be mobilised.

These contracts must provide for the possibility of stopping the study either at the end of a specific period, or when expenses reach a fixed amount.

Where justified by its nature and importance, the study may be divided into several phases, each one with a price.

In this case, the contract may provide for performance to cease at the end of each of these phases.

The special specifications book stipulate that design office not established in Morocco are required to involve Moroccan experts with a proportion that may not be less than twenty per cent (20%) of the experts assigned to the performance of the services covered by the contract, unless these Moroccan experts are unavailable.

The project owner's organisation uses the results of the study for its own needs and for those of the authorities and organisations mentioned by the contract.

The contract sets out the rights reserved to the holder in the case of manufacture or works carried out as a result of the study conducted. Any industrial or intellectual property rights that may arise on the occasion of or during the course of the study are acquired by the holder, except in the event that the project owner reserves all or part of these rights by virtue of the contract.

B. Evaluation of tenders

The consultation regulations provided for in Article 21 of this decree specify that the evaluation of tenders is to be carried out in two stages. The first stage involves the evaluation of technical quality, while the second stage focuses on the evaluation of financial offers.

1 –Technical quality is assessed on the basis of several criteria, including in particular :

- the competitor's experience in relation to the mission concerned;
- the quality of the proposed methodology;
- the work programme;
- The level of qualification of the proposed experts;
- The rate of transfer of skills and knowledge;
- The rate of participation of Moroccan experts among the key personnel proposed for the performance of the services covered by the contract, except in the event of their unavailability, in a proportion which may not be less than twenty per cent (20%) of these experts, when the holder is a design office not established in Morocco.

A technical score is awarded for each criterion. The scores for criteria are then weighted to give an overall technical score out of 100. The weightings may vary depending on the situation.

The applicable weightings and the eligibility threshold for competitors must be set out in the consultation regulations.

At the end of this first phase, a report on the technical evaluation of proposals shall be prepared. This report justifies the results of the evaluation, describing the respective strengths and weaknesses of the bids.

In light of this report, the commission will reject bids whose overall technical score is below the required eligibility threshold.

2 –For the financial evaluation, the financial offer includes taxes, duties and charges, reimbursable expenses such as travel, translation and printing of reports and secretariat costs, as well as overheads and profits.

The commission will reject bids deemed excessive and abnormally low, in accordance with the following modalities :

–A bid is deemed to be excessive if it is more than twenty percent (20%) higher than the estimated cost of services drawn up by the project owner;

–A bid is deemed to be abnormally low when it is lower by more than twenty-five percent (25%) compared to the estimate of the cost of services drawn up by the project owner.

The commission then ranks the other financial proposals and awards a financial score out of one hundred (100) points to the lowest proposal and financial scores inversely proportional to their amounts to the other proposals.

The financial scores may, however, be determined using other methods. In this case, the method to be used must be specified in the consultation regulations.

3 –For the award of the contract, the overall score is obtained by adding together the technical and financial scores, after introducing a weighting.

The weighting assigned to the financial offer is determined taking into account the complexity of the mission and the desired level of technical quality.

The weighting assigned to the financial offer is set at between ten (10) and forty (40) points, out of an overall score of one hundred (100) points.

The proposed weightings for technical quality and financial offer are specified in the consultation regulations. The offer of the competitor having obtained the highest overall score is considered to be the most advantageous offer.

ART. 145. – Service contracts for information systems

In the case of service contracts for the design, development and implementation of information systems, the special specifications book stipulate that competitors not established in Morocco are required to involve Moroccan experts with a proportion that may not be less than twenty per cent (20%) of the experts assigned to the performance of the services covered by the contract, unless these Moroccan experts are unavailable.

ART. 146. –Industrial compensation

The special specifications book relating to major projects regarding, in particular, sectors linked to defence, security, industry, energy and new technologies may include one or more industrial compensation clauses, subject to compliance with commitments made under international agreements duly ratified by the Kingdom of Morocco.

Industrial compensation may involve direct investment, skills or technology transfer, training, the purchase or use of local products, industrial integration, maintenance and after-sales service.

This compensation does not give rise to any financial counterparty on the part of the project owner.

The criteria to be used to assess the elements of the competitors' bids relating to industrial compensation are set out in the consultation regulations.

ART. 147. –National preference

When competitors not established in Morocco tender for works, supply or service contracts, preference shall be given, during the evaluation of financial bids, to bids submitted by competitors established in Morocco, subject to compliance with commitments entered into under international agreements duly ratified by the Kingdom of Morocco.

To this end, the amount of the financial offer submitted by the competitor not established in Morocco is :

- Reduced by a percentage fixed at fifteen per cent (15%), when the amount of this offer is the closest by default to the reference price and there are offers submitted by competitors established in Morocco that are lower than this reference price;
- Increased by a percentage fixed at fifteen per cent (15%), where the amount of this offer is the closest by excess to the reference price, in the absence of offers lower than this reference price;
- Increased by a percentage fixed at fifteen per cent (15%), where the amount of this offer is the closest by default to the reference price, in the event that the offers submitted by competitors established in Morocco are higher than this reference price.

As regards service contracts related to studies, the amount of the financial offer submitted by the competitor not established in Morocco is increased by a percentage set at fifteen per cent (15%).

The provisions of this article shall not apply to a group where one or more of its members are established in Morocco, provided that the share held by the member or members in this group is equal to or greater than thirty (30%) percent, as indicated on the act of commitment.

ART. 148. –Measures in favour of very small, small and medium-sized enterprises, cooperatives, cooperative unions and self-employed entrepreneurs.

The project owner is required to:

- Set aside a percentage of thirty per cent (30%) of the estimated value of the contracts that he intends to award, for each budget year, to very small, small and medium-sized enterprises established in Morocco, including young innovative companies, cooperatives, cooperative unions and self-employed entrepreneurs;
- Publish, at the beginning of each budget year, on the public procurement portal, a list showing the number of public contracts awarded, in respect of the previous budget year, to very small, small and medium-sized enterprises established in Morocco, including young innovative companies, cooperatives, cooperative unions and self-employed entrepreneurs and their global amount.

The conditions and procedures for applying the provisions of the first subparagraph above are set by order of the Minister of Finance.

ART. 149. –Promotion of local employment

Contracts for works and services other than studies must contain a clause whereby the contract holder undertakes to use local labour to carry out the services covered by the contract.

The special specifications book shall set the rate of use of local labour, up to a limit of twenty per cent (20%) of the workforce required to carry out these services.

For the purposes of this article, « local labour » means labour from the municipality where the services covered by the contract are to be performed or, where applicable, from the prefecture, province or region.

ART. 150. – Groups

Competitors may, on their own initiative, form groups to submit a single tender. The group may be either joint or based on solidarity.

The project owner may not restrict participation in the contracts he awards exclusively to groups, nor require the formation of a group.

Any competitor who is a member of a joint or solidarity group must have a qualification and classification certificate in order to participate in works contracts subject to a qualification and classification system in accordance with the regulations in force.

Any competitor who is a member of a joint or solidarity group must have an approval certificate in order to participate in service contracts related to studies or project management subject to an approval system in accordance with the regulations in force.

A. Joint group:

The group is said to be « joint » when each of the members of the group undertakes to perform one or more distinct parts, both in terms of definition and remuneration, of the services covered by the contract.

One of the members of the group, designated as mandatory agent in the act of commitment, represents all the members in their dealings with the project owner.

The mandatory agent is severally liable with each of the members of the group for his contractual obligations towards the project owner for the performance of his obligations under the contract.

Each member of the joint group must have the legal, technical and financial capacities required to carry out the part or parts of the services for which he is engaged.

For works contracts subject to a qualification and classification system in accordance with the regulations in force, each member of the group must have the qualification(s) and class(es) required for the part(s) of the services for which he is engaged to perform.

For service contracts related to studies or project management subject to the approval system in accordance with the regulations in force, each member of the group must hold the required approval for the field(s) of activity corresponding to the part(s) of the services for which he is engaged to perform.

A joint group must submit a single act of commitment indicating the total amount of the contract and specifying the service or services that each member of the joint group undertakes to provide.

B. Solidarity group:

A group is said to be « solidarity » when all its members undertake severally, towards the project owner to perform the entire contract.

One of the members of the group, designated as mandatory agent in the act of commitment, represents all the members in their dealings with the project owner and coordinates the performance of the services by all the members of the group.

The solidarity group must submit a single act of commitment indicating the total amount of the contract and all the services that the members of this group undertake severally to provide, it being specified that this act of commitment may, where appropriate, indicate the services that each of the members undertakes to provide under this contract.

Each member of the solidarity group must have the required legal capacities.

The financial and technical capacities of the solidarity group are assessed on the basis of a pooling of the human, technical and financial resources of all its members to ensure that they meet, in a complementary and cumulative manner, the requirements laid down for this purpose in the contract award procedure.

The qualifications of the group's members are assessed as follows:

- For works contracts subject to a qualification and classification system in accordance with the regulations in force, the mandatory agent of the group must have the required qualification(s) and class. The other members of the group, individually, must have at least the required qualification or qualifications and the class immediately below the required class;
- For service contracts related to studies or project management subject to an approval system in accordance with the regulations in force, each member of the group must hold the approval required for the required field(s) of activity ;
- For contracts not subject to a qualification and classification system, nor to an approval system, the members of the group must produce, individually, the reference certificates provided for in article 28 of this decree.

C. Provisions common to joint and solidarity groups:

The special specifications book, the financial offer and, where applicable, the technical offer submitted by a group must be signed either by all the members of this group, or only by the mandatory agent, if the latter provides proof of authorisation in the form of a legalised power of attorney to represent the members of the group during the contract award procedure.

When the contract is awarded on the basis of a call for tenders with pre-selection or a competition, the composition of the group may not be changed between the date on which applications are submitted and the date on which tenders are submitted.

The same competitor may not, on an individual basis or as a member of a group, submit more than one bid for the same contract in the case of a single contract or for the same lot in the case of an allotment contract.

However, in the case of allotment contracts, the competitor may submit bids either individually or as a member of a group, provided that the bids submitted do not relate to the same lot.

Each group must submit, as part of its administrative file, the agreement setting up the group or a certified copy of the original.

This agreement must indicate, in particular, the purpose of the agreement, the nature of the group, the mandatory agent, the duration of the agreement, the bank account(s) and, where applicable, the distribution of services.

In the case of a group, the provisional and final bail may be subscribed in one of the following forms:

- a) Collectively in the name of the group;
- b) By one or more members of the group for the entire bail;
- c) In part by each member of the group so that the entire amount of the bail is subscribed.

In the cases provided for in b) and c) above, the receipt for the provisional and final bail or the certificate of the personal and joint bail in lieu thereof must specify that they are issued in the context of a group.

In addition to the cases provided for in Article 24 of this Decree, the provisional bail shall be confiscated in the event of failure of the group, regardless of the defaulting member.

ART. 151. –Subcontracting

Subcontracting is a written contract by which the contract holder entrusts, under his responsibility, to a third party the performance of part of the services covered by this contract.

Subcontracting may not exceed fifty percent (50%) of the contract amount taxes included, nor relate to the lot or the main body of the contact

For the application of this provision, the special specifications book must indicate, among the components of the service, those which constitute the main body and, where applicable, those services which may not, under any circumstances, be subcontracted.

Subcontractors must satisfy the conditions required from competitors as provided for in article 27 of this decree.

Where the holder intends to subcontract, he must have recourse to service providers established in Morocco, particularly very small, small and medium-sized enterprises, including young innovative companies, cooperatives, cooperative unions and self-employed entrepreneurs;

Subject to the provisions of the fourth subparagraph of this article, the contractor is free to choose his subcontractors. However, he is required to send to the project owner, a certified copy of the original subcontracting contract specifying, in particular, the nature of the subcontracted services, the identity, company name or name and address of the subcontractor or subcontractors to whom he has entrusted the performance of part of the services covered by the contract.

When the project owner realises that the subcontractors do not meet the conditions laid down in article 27 of this decree, he may, within a period of fifteen days from the date of receipt of the subcontract, exercise a right of challenge, by sending a motivated and registered letter with acknowledgment of receipt.

The special specifications book include a clause requiring the holder to submit to the project owner the documents justifying the payment, by him, of the sums due to the subcontractor as the subcontracted services are performed.

The project owner does not recognise any legal relationship with the subcontractors.

The holder remains personally liable for all obligations arising from the contract with regard to the project owner, employees and third parties.

The holder is required to provide the subcontractor, at his request, with a certificate of satisfactory performance of the subcontracted services.

ART. 152. –Coercive measures

In the event of the submission of an inaccurate declaration of honor or falsified documents, or where fraudulent or corrupt acts, repeated breaches of working conditions or serious breaches of contractual commitments have been found to be attributable to a competitor, successful tenderer or holder, as the case may be, sanctions or one of them only, without prejudice, where appropriate, to legal proceedings, shall be imposed:

a) By a decision of the government authority concerned, taken after obtaining the opinion of the National Commission for Public Procurement, the temporary or permanent exclusion of the competitor concerned from participation in contracts launched by the departments under its authority and/or in the contracts of the public institutions under its supervision;

b) By a decision of the president of the legislative body of the legal entity governed by public law referred to in article 2 of this decree, after obtaining the opinion of the National Commission for Public Procurement, the temporary or permanent exclusion of the competitor concerned from participation in contracts launched by the departments reporting to the said legal entity;

The exclusion measure provided for in a) above may be extended to contracts launched by all State administrations and public institutions by a decision of the Head of Government, taken on a proposal from the Minister concerned and after obtaining the opinion of the National Commission for Public Procurement.

c) By decision of the Minister of the Interior, taken after obtaining the opinion of the National Commission for Public Procurement, the temporary or permanent exclusion of the competitor concerned from participation in contracts launched by local authorities.

This exclusion measure may be extended to contracts awarded by the State, public institutions and other legal entities governed by public law, by decision of the Head of Government, taken on a proposal from the Minister of the Interior and after obtaining the opinion of the National Commission for Public Procurement.

d) By decision of the competent authority, the termination of the contract, whether or not followed by the award of a new contract, at the expense and risk of the holder. Excess expenses resulting from the award of a new contract after its termination is deducted from any sums that may be due to the defaulting holder, without prejudice to any rights to be exercised against him in the event of a shortfall. Any reductions in expenditure remain the property of the project owner.

In the cases provided for in a), b) and c) above, the competitor, the successful tenderer or the holder, who are notified of the complaints against them, are invited in advance to submit their observations within the time limit set by the project owner. This time limit may in no case be less than fifteen days.

The decisions provided for in a), b) and c) must be motivated, notified to the competitor, the successful tenderer or the defaulting holder, as the case may be, and published on the public procurement portal.

ART. 153. –Models

The models for the following documents shall be set by order of the Minister of finance, after obtaining the opinion of the National Commission for Public Procurement:

- the act of commitment;
- the framework of the price schedule;
- the framework of the supply price schedule;
- the framework of the Itemised estimate;
- the framework of the price schedule -itemised estimate;
- the framework of the global price schedule;
- the framework of the breakdown of the global amount;
- the framework of the detailed breakdown of prices;
- the declaration of honor;
- the declaration of the architect's identity;
- the framework of the forecast programme;
- the advertising notice;
- the application for admission;
- the letter of admission;
- the circular letter of consultation;
- the framework of the minutes of the session of the call for tenders, the competition, the architectural consultation or the architectural competition;
- the framework of the extract from the minutes of the session of the call for tenders, the architectural consultation competition or the architectural competition;
- the framework of the final results of the call for tenders, competition, architectural consultation or architectural competition;
- the framework of the contract presentation report;
- the framework of the contract completion report;
- the architect's contract;
- the framework of the negotiated procedure commission report ;
- the framework of the report of the negotiated architectural consultation jury ;
- the framework of the administrative certificate;
- the model of the list of purchase orders concluded in respect of the previous budget year;
- the model of the list of public contracts awarded to very small, small and medium-sized enterprises, cooperatives, cooperative unions and self-employed entrepreneurs;
- the model of the list of agreements or contracts under ordinary law concluded in respect of the previous budget year;
- the model of the workload plan declaration;
- the model of the decision to designate the project owner;
- the model of the delegated project management agreement.

Chapter IX Governance of public procurement

ART. 154. –Delegated project management

1 –The competent authority may, by agreement, entrust the execution, in the name and on behalf of the body concerned, of all or part of the project management tasks, in order to ensure the proper execution of the contract and the achievement of the objectives assigned to the project that is the subject of the said contract.

Delegated project management relates exclusively to contracts for works and related studies. It is entrusted to a public administration, a public institution, a state-owned company or one of its subsidiaries, a public subsidiary or a regional development company, a development company or a local development company, duly authorised to ensure delegated project management, within the limits of the tasks assigned to it.

Recourse to delegated project management is subject, depending on the case, to :

- A decision by the Head of Government, taken after approval by the Minister of Finance, in the case of the State, public institutions and other legal entities governed by public law as provided for in article 2 of this decree;
- An authorisation from the Minister of the Interior for local authorities.

The conclusion of the delegated project management agreement for local authorities is subject to the prior opinion of the Minister of the Interior.

The project management missions to be delegated may relate in particular to:

- Definition of the administrative and technical conditions under which the work will be studied and executed;
- Monitoring and coordination of studies;
- Review of pre-projects and projects;
- Approval of pre-projects and projects;
- Preparation of consultation files;
- the award of contracts in accordance with the provisions of this decree;
- Management of the contract after its approval by the competent authority;
- Monitoring, coordination and control of works;
- Acceptance of the work.

The missions entrusted to the delegated project owner are carried out in accordance with the legislation and regulations in force governing public procurement, including the provisions of this decree.

The delegated project owner is only liable to the competent authority for the performance of the missions entrusted to him by the latter under the delegated project management agreement.

The delegated project owner represents the organisation concerned with regard to third parties in the performance of the missions entrusted to him until the competent authority has established that the said missions have been completed under the conditions defined by the delegated project management agreement.

2 –The aforementioned agreement specifies in particular:

- a) The work(s) which are the subject of the project management delegation;

- b) The missions entrusted to the delegated project owner;
- c) The conditions under which the project owner declares that the delegated project owner's mission has been completed;
- d) The terms and conditions for the progressive remuneration of the delegated project owner, depending on the progress of the project that is the subject of the said delegation of project management;
- e) The conditions under which the agreement may be terminated;
- f) The method of financing the work in accordance with the regulations in force;
- g) The terms of the technical, financial and accounting control exercised by the project owner at the various stages of the operation;
- h) The conditions for approval of the pre-projects and acceptance of the work;
- i) The obligations of the delegated project owner towards the project owner in the event of a dispute arising from the performance of the delegated project management mission or from damage caused to third parties.

3 –The delegated project management agreement also sets out the terms and conditions for the gradual payment by the project owner to the delegated project owner of the sums required to carry out the project, depending on the progress of the project.

4 –When delegated project management is entrusted to one of the bodies provided for in the second subparagraph of paragraph 1 of this article and the delegated project owner is not designated as sub-authorising officer, payments are made to the account opened for this purpose at the General Treasury of the Kingdom in the name of the delegated project owner.

5 –Sums paid to the delegated project owner and not used after completion of the contract shall be returned to the project owner concerned.

ART. 155. –Collective of project owners

1 –Project owners may coordinate their purchases of supplies of the same nature or the provision of services of the same nature other than studies, within the framework of a collective of project owners.

2 –A collective of project owners is made up of two or more project owners who join together to issue a single call for competition, resulting in the conclusion of as many contracts as there are project owners who are members of the collective.

Contracts awarded by the collectives of project owners obey the rules provided for in this decree.

3 –The founding agreement of the collective is signed by all its members. This agreement defines the operating procedures of the collective and appoints a coordinator from among its members.

A copy of the founding agreement of the collective of project owners must be included in the contract file.

4 –In the agreement, each member of the collective undertakes to sign a contract with the successful tenderer for the amount of his own needs as determined in advance, and to monitor its performance.

5 –The coordinator shall prepare, in consultation with the members of the collective, the tender documents as provided for in article 22 of this decree. These documents indicate, at the level of the special specifications book, the purchases of each member of the collective and the price schedules-itemised estimates.

6 –In accordance with the provisions of this decree, the coordinator launches the call for competition and selects the successful tenderer.

7 –Competitors must submit an act of commitment and, where applicable, a provisional bail for each order placed by each member of the collective.

8 –In addition to the members provided for in Article 38 of this decree, the tendering commission of the collective of project owners includes representatives of the members making up the collective.

9 –The coordinator of the collective of project owners must send the tender documents file to the members of the tendering commission at least six days before the tender notice is sent out for publication.

The aforementioned members have a period of six days to send any comments they may have to the coordinator.

10 –When one of the members of the collective of project owners does not conclude the contract, resulting from the call for competition launched by the coordinator on behalf of the collective, or when this contract is not approved by the competent authority to which the said member belongs, he shall inform the coordinator in writing.

The coordinator shall be required to notify the successful tenderer, by any means capable of giving a certain date, of the withdrawal of the said member from the collective.

In this case, the successful tenderer may either:

- Agree to conclude contracts with other members of the collective of project owners under the same conditions;
- Refuse to conclude contracts with other members of the collective of project owners. In this case, the call for competition is cancelled by the competent authority to which the coordinator belongs.

The founding agreements of the collectives of project owners under local authorities are approved in accordance with the procedures established by order of the Minister of the Interior.

ART. 156. –Contract presentation report

All draft contracts must be the subject of a presentation report drawn up by the project owner, setting out in particular :

- the objectives assigned to the project or service covered by the contract and the related indicators ;
- the means to be used to carry out the project or service covered by the contract;
- the budget allocated to the contract;
- the deadlines for the completion of the project or service;
- the nature and extent of the needs to be met as defined in Article 5 of this Decree;
- presentation of the general economy of the contract;

- the reasons for the choice of this award method;
- Justification for the choice of criteria for selecting applications and assessing tenders;
- Justification for the choice of the successful tenderer.

As for negotiated contracts, the report referred to above shall mention, as far as possible, the justifications for the prices proposed in relation to the prices normally practiced on the market.

This report, signed by the project owner, must be placed in the contract file to be made available to the competent bodies for the purposes of control and audit referred to in article 159 of this decree.

For contracts awarded by local authorities, the presentation report shall be sent by the project owner to the Minister of the Interior at his request.

ART. 157. –Contract completion report

Any contract, the amount of which, is equal to or greater than one million (1,000,000) dirhams, all taxes included, must, within a maximum period of three months after final acceptance of the services, be the subject of a completion report drawn up by the project owner.

This report shall mention in particular:

- the subject of the contract;
- the contracting parties;
- the nature of the subcontracted services and the identity or name of the subcontractor or subcontractors, where applicable;
- the execution time, specifying the start and completion dates for the performance of the services and justifying any delays in relation to the date initially scheduled for the completion of the performance of the services;
- the place or places where the services are to be performed;
- A physical assessment showing the changes made to the initial programme and variations in the volume and nature of the services;
- the financial statement showing the budget actually devoted to the execution of the contract, including, where applicable, all subsequent expenses relating, in particular, to price adjustments, bonuses, compensation and default interest ;
- An assessment of whether the objectives set for the project or service covered by the contract have been achieved and whether the related indicators have been met;
- Any discrepancies between the objectives initially set, the record of achievements and the reasons for these discrepancies.

The completion report is sent, as the case may be, to the minister concerned or to the president of the legislative body of the public institution or the legal entity governed by public law referred to in Article 2 of this decree and is placed in the contract file to be made available to the competent bodies for the purposes of control and audit referred to in Article 159 of this decree.

With regard to local authorities, this report shall be sent by the project owner to the competent authority and to the Minister of the Interior at his request.

ART. 158. – The Moroccan Public Procurement observatory

The Moroccan Public Procurement observatory will be established and domiciled at the General Treasury of the Kingdom.

The composition, missions and operating procedures of this observatory shall be laid down by regulation.

ART. 159. –Control and audit

Without prejudice to the controls established by the legislation and regulations in force, the contracts and their amendments are subject to controls and audits initiated by:

- the relevant Minister for contracts awarded by departments under his authority or public institutions under his supervision;
- the Minister of the Interior for contracts awarded by local authorities;
- the president of the legislative body for contracts awarded by the other legal entities governed by public law referred to in article 2 of this decree.

The controls and audits referred to in the first subparagraph above shall relate, in particular, to the following :

- the regularity of the procedural acts relating to the preparation, award and performance of the contract ;
- the assessment of the reality or materiality of the work carried out, the supplies delivered or the services provided;
- Compliance with the obligation to draw up and publish documents relating to the contract as provided for in this decree;
- Assessment of the results obtained in relation to the objectives set and the resources used;
- Assessment of the contract prices in relation to current prices and an evaluation of the cost of the services covered by the contract;
- Examination of the appropriateness of projects and services carried out under the contract ;
- Implementation of internal audit and control arrangements and risk mapping for public procurement.

Subject to the provisions of the following subparagraph, the control and audit provided for in this article are compulsory for any contract whose amount exceeds three million (3,000,000) dirhams, all taxes included.

Control and audit are compulsory for negotiated contracts whose amount exceeds one million (1,000,000) dirhams, all taxes included.

The control and audit referred to above are the subject of detailed reports sent, as appropriate, to the minister concerned, to the minister of the interior in the case of local authorities, to the president of the legislative body of the public institution or to the president of the legislative body of the legal entity governed by public law referred to in article 2 of this decree.

Extracts from these reports are published on the public procurement portal.

ART. 160. –Professional secrecy

subject to the application of the sanctions provided for by the legislation in force, all participants in the public procurement procedure shall be bound by professional secrecy with regard to data and information of which they have become aware during the performance of their duties.

ART. 161. –Confidentiality of the procedure

No information concerning the examination of tenders, the clarifications requested from the competitors, the evaluation of tenders or the award of the contract may be communicated either to the competitors or to any other person not entitled to take part in the current procedure, as long as the results of the examination of tenders have not been published on the public procurement portal.

ART. 162. –Fight against fraud, corruption and conflict of interest

All participants in procurement procedures, in whatever capacity, must maintain their independence from competitors and refrain from accepting any advantage or gratuity from them or maintaining any relationship with them that might compromise their objectivity and impartiality.

Any member of a tendering commission, a competition jury, a negotiation commission or a sub-commission and any other person called upon to participate in the work of these commissions and juries must inform the president of any conflict of interest in which they may be directly or indirectly involved.

The member or person in a situation of conflict of interest must refrain from intervening in any way whatsoever in the procedure for awarding the public contract concerned.

For the purposes of this article, a conflict of interest is any conflict arising from a situation in which any person involved in the public procurement procedure has an interest likely to affect the impartial and objective exercise of his functions or duties.

Chapter X Complaints and appeals

ART. 163. –Complaints from competitors and suspension of the procedure

D) Any competitor may, by any means capable of giving a date certain, submit a request to the project owner concerned, where he:

- a) Notes a procedural defect in the award of the contract;
- b) Notes that the tender documents contain discriminatory clauses or conditions that are disproportionate to the subject of the contract;
- c) Notes that one of the members of the tendering commission or the competition jury is in a situation of conflict of interest as defined in article 162 of this decree;
- d) Contests the reasons given by the project owners for rejecting his bid.

In the cases provided for in a), b) and c) above, the competitor's complaint must be lodged from the date of publication of the notice of call for competition and, at the latest, on the fifth day after publication of the result of this call for competition on the public procurement portal.

In the case provided for in d) above, the competitor's complaint must be lodged within five days of the date of receipt of the letter informing him of the reasons for the disqualification of his bid.

II) The project owner has a period of no more than five days from the date of receipt of the complaint to inform the complainant concerned of his response.

To this end, he must, depending on the case, reject, in a well-reasoned manner, the complaint submitted to him, rectify the anomaly identified by the complainant and continue the procedure or propose to the competent authority that the procedure be cancelled in accordance with the provisions of article 48 of this decree.

III) If the project owner does not respond within the time limit set or if the complainant is not satisfied with his response, he may, within five days of the date of receipt of the project owner's response, refer the matter, as appropriate, to :

- the relevant minister for contracts awarded by the ministerial departments for which he is responsible ;
- the Minister of the Interior or the authority delegated by him for this purpose for contracts awarded by local authorities;
- the president of the legislative body for contracts awarded by public institutions or other legal entities governed by public law.

The complainant must inform the project owner of this referral as soon as possible.

In the case provided for in paragraph d) of I) of this article, the waiting period referred to in article 142 of this decree is extended by an additional fifteen days.

IV) In the cases provided for in paragraphs a), b) and c) of I) of this article, the Minister concerned, the Minister of the Interior or the authority delegated by him for this purpose or the president of the legislative body of the public institution or the legal entity governed by public law, as the case may be, must, before ruling on the complaint referred to him, order the project owner to suspend the tendering procedure for a maximum period of ten days, when it turns out that the complaint is well-founded and that the competitor risks suffering damage if the procedure is not suspended.

Once the complaint has been examined, the Minister concerned, the Minister of the Interior or the authority delegated by him for this purpose or the president of the legislative body of the public institution or the legal entity governed by public law may, depending on the stage of the procedure, reject, in a well-reasoned manner, the complaint, order the project owner to rectify the anomaly identified by the complainant and to continue the procedure or decide to cancel the procedure in accordance with the provisions of article 48 of this decree.

However, the Minister concerned, the Minister of the Interior or the authority delegated by him for this purpose or the president of the legislative body of the public institution or the legal entity governed by public law may, each in his sphere, order the project owner to continue the contract award procedure in question, for duly justified urgent public interest considerations.

In all cases, they are required, each in his sphere, to reply to the complainant, by letter sent by any means capable of giving a certain date, within a period not exceeding fifteen days from the date of receipt of the complaint.

V) Any decision taken by virtue of this article by the project owner, the Minister concerned, the Minister of the Interior or the authority delegated by him for this purpose or the president of the legislative body of the public institution or the legal entity governed by public law, must be motivated and be the subject of a detailed report which must be included in the contract file.

This decision must be communicated to the complainant and forwarded by the project owner to the members of the tendering commission.

VI) Competitors may not challenge :

- a) The choice of a procurement procedure ;
- b) The decision of the tendering commission or the competition jury to reject all bids in accordance with the provisions of articles 45, 65, 83, 111 and 129 of this Decree;
- c) The decision by the competent authority to cancel the call for tenders or the competition in accordance with the conditions laid down in articles 48, 65, 86, 114 and 132 of this Decree.

VII) The project owner shall record in the special register provided for in article 4 of this decree the name of the complainant, the date on which the complaint was received, its subject and the action taken in accordance with the provisions of this article.

ART. 164. –Recourse to the National Commission for Public Procurement

Without prejudice to the provisions of Article 163 above, any competitor may refer the matter directly to the National Commission for Public Procurement under the conditions and in accordance with the procedures laid down by Decree no. 2-14-867 of 7 hijra 1436 (21 September 2015) on the National Commission for Public Procurement, as amended and supplemented.

In this case, he must, at the same time, inform the project owner of the referral to the National Commission for Public Procurement by any means that can give a certain date.

When the complaint relates to the case provided for in paragraph d) of I) of article 163 above, the waiting period provided for in article 142 of this decree is extended by an additional fifteen days.

Chapter XI

Provisions specific to some public contracts

ART. 165. –Contracts of the national defence administration

Contracts for works, supplies or services awarded by the national defence administration are subject to the provisions of this decree, subject to the following:

- 1 –The national defence administration is not required to :
 - Request the authorisation provided for in the third subparagraph of article 5 of this decree ;
 - Draw up the administrative certificate provided for respectively in subparagraph 8 of Article 5 and in subparagraph a) of paragraph 3 of Article 19 of this decree;
 - Limit itself, in determining the maximum, to twice the minimum of the services agreed in terms of quantity or value of the framework contracts provided for in subparagraph 3 of paragraph 1 of Article 7 of this Decree;
 - Open the bids in public session as provided for in Articles 20, 39, 49, 66, 107 and 125 of this Decree;

- Immediately apply the provisions on the receipt of bids by the president of the tendering commission,
- Publish the forecast programme, the contract completion reports and the documents provided for in Article 134 of this Decree;
- Publish the notice of purchase on the basis of purchase orders provided for in the fourth paragraph of article 91 of this decree;
- publish the list of public contracts provided for in the third subparagraph of Article 148 of this Decree;
- Use the procedures for the electronic exchange of documents and electronic reverse auctions provided for in Articles 135, 136 and 138 of this Decree;
- Subject contracts to the provisions of article 159 of this decree;
- Apply the provisions of article 148 of this decree to contracts relating to armaments, munitions or military equipment;
- Comply with the scope of application and respect the threshold and conditions for recourse to restricted architectural consultation provided for in the fourth subparagraph of paragraph 3 of Article 94 of this decree;
- Publish the notice of the call for competition on the competitive dialogue provided for in Article 12 of this Decree;
- Comply with the thresholds provided for in article 19 of this decree;
- Pass on the price variation to the settlement price of supply contracts.

2 –The consultation of competitors as part of the competitive dialogue provided for in article 12 of this decree is carried out by circular letters sent by registered letter with acknowledgement of receipt, on the same day, to all the competitors that the project owner decides to consult.

The competitive dialogue may include a stage of testing or experimentation of the military equipment and materials which are the subject of the consultation.

The commission responsible for examining the bids resulting from the competitive dialogue is set up in accordance with the second paragraph of article 87 of this decree.

The examination and evaluation of competitors' financial offers as part of the competitive dialogue are carried out in accordance with the third subparagraph of paragraph 3 of article 87 of this decree.

As part of the competitive dialogue, the competent authority may invite the commission to conduct a final round of negotiations with the candidate to whom it is intended to award the contract. This negotiation may concern the improvement of the general conditions of the technical, financial and, where appropriate, industrial compensation offers, in particular as regards price, the guarantees offered, the period of performance and terms of payment and financing.

3 –The notice of the call for competition sets the deadline for the submission of bids.

4 –The ceilings for readjustment of the conditions of performance of framework contracts and renewable contracts provided for in articles 7 and 8 of this decree, awarded on the basis of electronic catalogues, are to be considered on an annual basis.

5 –Services relating to national defence and having a specific and confidential character due to their nature and the place of their performance or delivery may be the subject of a restricted

call for tenders, without any limitation on the ceiling or the drawing up of administrative certificates.

6 –For the acquisition or maintenance of military equipment and materials, the national defence administration may, as part of the award procedures set out in this decree, require from any competitor to produce any supporting documents it deems necessary.

7 –The final and general statement provided for respectively in the seventh paragraph of Article 7 and the sixth paragraph of Article 8 of this Decree are drawn up only after the total amount of the framework contracts and renewable contracts has been exhausted, even if the contractual deadlines have been exceeded.

8 –Contracts concerning national defence awarded in accordance with the negotiated procedure provided for in subparagraph 2 of paragraph II) of Article 89 of this decree, in accordance with the restricted tendering procedure or in accordance with the competitive dialogue procedure may include a clause on industrial compensation.

9 –For the purposes of evaluating and comparing bids, the amounts of bids expressed in foreign currencies must be converted into dirhams.

This conversion is made on the basis of the reference exchange rate of the dirham in force, given by Bank Al-Maghrib, on the first working day of the week preceding the deadline for the submission of bids provided for in the notice of the call for competition

ART. 166. –Contracts for the restoration of traditional, historic and ancient works

Contracts for works, supplies and services involving the restoration of traditional, historic and ancient works classified in accordance with the provisions of the aforementioned law no. 22-80 are subject to the provisions of this decree, subject to the specific provisions below:

1 –Restricted calls for tenders are used for services involving the restoration of traditional, historic and ancient works and not requiring the production of any administrative certificate;

2 –Services involving the restoration of traditional, historic and ancient works may be the subject of negotiated contracts without prior publicity and competitive tendering;

3 –Open architectural consultation is used for projects whose estimated overall budget for services involving the restoration of traditional, historic and ancient works is less than fifty million (50,000,000) dirhams excluding taxes;

4 –Architectural competitions are used for services involving the restoration of traditional, historic and ancient works, where the estimated overall budget for the works is equal to or greater than fifty million (50,000,000) dirhams excluding taxes. However, the project owner may use this procedure even for projects costing less than this limit;

5 –Services involving the restoration of traditional, historic and ancient works which require particular expertise and know-how in the field may be the subject of negotiated architectural consultation without prior publicity and competitive tendering;

6 –The architect's fees for projects involving the restoration of traditional, historic and ancient works may not be less than five (5%) per cent or more than eight (8%) per cent;

7 –The open architectural consultation shall be subject to consultation regulations drawn up by the project owner and shall contain, for the restoration of traditional, historic and ancient works, in addition to the administrative file provided for in article 100 above, the following documents :

–A note indicating the architect's experience in the field of restoration of historic monuments, validated by the national order of architects;

–Certificates or certified copies thereof issued by the public or private project owners or by the specialists/ men of art under whose supervision the architect carried out the services relating to the restoration of traditional, historic and ancient works. Each certificate shall specify, in particular, the nature of the services he has supervised, details of the services he has carried out, their amount, the year in which they were carried out, the name and position of the signatory and his assessment.

ART. 167. –Services relating to the support and/or regulation of the country's supply of cereals, legumes and derived products

Services relating to the support and/or regulation of the country's supply of cereals, legumes and derived products shall continue to be governed by the specific procedure set out for this purpose by the National Interprofessional Office for Cereals and Legumes, in accordance with the legislation and regulations in force in this area.

ART. 168. –The offers to finance the contract on advantageous terms by means of concessional financing

The offer to finance the contract on advantageous terms, presented in the context of concessional financing, may be retained among the criteria for selecting and ranking offers under the conditions set out in article 21 of this decree.

The procedures for applying the provisions of the first subparagraph of this article are defined by order of the Minister of Finance.

**Chapter XII
Transitional and final provisions**

ART. 169. –Entry into force

This Decree shall enter into force on the first day of the sixth month following the date of its publication in the Official bulletin and repeals, as of the same date, the Decree No. 2-12-349 of 8 Jumada I 1434 (20 March 2013) on public procurement, as it was amended and supplemented.

ART. 170. –Transitional provisions

Procedures on public contracts launched, prior to the date of entry into force of this Decree, by the State, local authorities and public institutions, the list of which is set by Order of the Minister of Economy and Finance No. 3535-13 of 24 Moharrem 1435 (28 November 2013), shall remain subject to the provisions of the aforementioned Decree No. 2-12-349.

On a transitional basis, the texts taken for the application of the aforementioned decree no. 2-12-349 shall remain in force until they are repealed or replaced in accordance with the provisions of this decree.

Done in Rabat, on 15 Chaabane 1444 (March 8, 2023).

AZIZ AKHANNOUCH.

For countersignature:

Minister Delegate to the Minister of Economy and Finance in charge of the Budget,

FOUZI LEKJAA.

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ANNEX NO. 1: LIST OF SERVICES THAT MAY BE THE SUBJECT OF CONTRACTS OR AGREEMENTS UNDER ORDINARY LAW:

- Purchase of advertising spaces and advertising insertions;
- Purchase of works of art, antiques or collectibles, copyrights, image rights, audio rights, musical compositions, illustrations, photos, images and videos;
- Purchase of dogs and horses for national defence or public security purposes.
- Purchase of newspapers, magazines and various publications and subscription services;
- Purchase of domain names, online keywords and other media as well as website indexing and acquisition of databases;
- Purchase of labile blood products and plasma fractionation services;
- Purchase of shows or acquisition of literary, scientific, cultural, artistic or legal works;
- Purchase of vehicles and machinery for national defence or public security purposes;
- Purchase or rental of buildings or land;
- Acquisition of climatic and meteorological data;
- Acquisition of stickers or cards for the purchase of fuel, lubricant and repair of the vehicle fleet including motorcycles and cards for motorway tolls;
- acquisition of stickers for the payment of water, electricity and telephone fees;
- Acquisition of stickers for the transport of diplomatic bags;
- Acquisition of stickers for land or air transport of people within the Kingdom of Morocco and abroad and purchase of plane tickets;
- Membership in national and international organisations;
- Medical consultations;
- legal, scientific, technical or literary consultations or research or expertise of private archives, manuscripts and rare objects or restoration of works and objects of art;
- Contracts concluded between the solidarity fund against catastrophic events on the one hand, and the National Pension and Insurance Fund, specialised bodies for the purchase of cover for financial commitments and related services and the investment bank for outsourcing contracts for the management of the fund's assets, on the other hand;
- Partnership contracts or agreements concluded between the National Agency for the Promotion of Small and Medium-sized Enterprises and public or private, national or foreign natural or legal persons, in the context of support and assistance to businesses;
- Partnership agreement with airlines companies and tour operators for the provision and financing of services as part of the missions assigned to the Moroccan National Tourist Office ;
- Transit and storage charges and related costs relating to donations or importation of grafts and goods whose value is not defined in advance;
- Multi-channel payment management;
- Legal mandates (bailiffs of justice, notaries, lawyers and doctors);
- Organisation of museum exhibitions by the National Foundation of Museums, including other related services;
- Commercial canvassing service provided by investment banks, commercial agents or business lawyers in order to attract potential investors or clients who are part of their client portfolio;
- Helicopter transport service for patients;
- Services provided between Barid Al Maghrib and the National Road Safety Agency;
- Insurance benefits;
- Services related to electricity, drinking water connection, and sewerage provided by the National Office of Electricity and Drinking Water (ONEE), by the water and electricity

distribution agencies and by companies delegated to provide the public service relating to the above-mentioned services;

- Compulsory continuing training and compulsory minimum initial qualification training services provided by bodies approved by the Ministry of equipment and the National Road Safety Agency;
- Training services leading to a diploma delivered by public educational institutions or universities ;
- Training services requiring special skills or expertise for national defence or public security purposes,
- Services of recourse to experts for the assessment of damage resulting from exceptional events;
- Transport services for Moroccan delegations accompanying Moroccan pilgrims by air;
- Transport services for guests within the Kingdom of Morocco, from Morocco to abroad or from abroad to Morocco;
- Transport services for equipment and machinery, within the Kingdom of Morocco for national defence or public security purposes;
- Hotel, accommodation, reception and catering services for national defence or public security purposes;
- Interpreting services for national defence or public security purposes;
- Services provided between State departments managed autonomously and public administrations, public institutions and local authorities;
- Postal services and postage costs;
- Specific pharmaceutical products, prosthetic materials, prostheses, including dental prostheses, and implantable devices.

ANNEX NO. 2: LIST OF SERVICES THAT MAY BE THE SUBJECT OF FRAMEWORK CONTRACTS

A. Services which may be the subject of framework contracts for a period of three (3) years

I) Work

- Routine maintenance work on the drinking water and electricity networks ;
- Routine maintenance and cleaning work on the liquid sanitation network;
- Maintenance work on rural roads;
- Maintenance work on irrigation networks;
- Road maintenance work;
- Servicing and maintenance work on hatchery equipment and shellfish purification plants for aquaculture activities;
- Servicing and maintenance work on the hydraulic structures of dams and related equipment, except for major repairs such as the renewal, restoration and modernisation of structures and equipment;
- Servicing and maintenance work on traditional, historic and ancient works;
- Cleaning and dredging work;
- Reforestation work;
- Work and services for the installation and removal of drinking water and electricity meters.

II) Supplies

- Acquisition of computer software licences;
- Manufacture, acquisition and supply of fabrics, textile products, effects and accessories for uniforms;
- Supply of magnetic tapes and supplies needed to operate video production equipment;
- Supply of fuel and lubricant, tires, inner tubes and accumulators;
- Supply of cartridges for cloud insemination;
- Supply of fuels and heating products;
- Supply of radiology films;
- Supply of medical fungibles and surgical threads;
- Supply of hydrocarbon binders for road maintenance work;
- Supply of fire-fighting equipment and products;
- Supply of mining and mineral processing equipment and tools;
- Supply of hydraulic, hydromechanical and electrical equipment, canals, pipes and their accessories;
- Supply of medicines and medical gases with the necessary facilities;
- Supply of spare parts for the vehicle fleet and machinery;
- Supply of plants, seedlings, grafted and selected walnut trees, seeds and fertilizers;
- Supply of racks intended for the breeding of plants or aquaculture;
- Supply of food products for human or animal use;
- Supply of consumable products for biological, physicochemical, bacteriological, microbiological and toxicological analyses, including glassware;
- Supply of consumable products for computer equipment;
- Supply of consumable products for printing services;
- Supply of haemodialysis products with or without the necessary facilities;
- Supply of treatment products for the day-to-day operation of the installations;
- Supply of disinfectant products with the provision of misting devices;
- Supply of pharmaceutical products and raw materials;
- Supply of prostheses and orthoses;

- Supply of photographic, magnetic phonographic and electronic recording media;
- Supply of explosives and shooting accessories;
- Supply of construction materials;
- Supplies of personal protection consumables;
- Supplies of satellite products.

III) Services

- Physicochemical, bacteriological, microbiological and toxicological analysis and expertise carried out by authorised analysis laboratories;
- Accounting, tax and legal assistance and advice;
- Technical support for software and websites;
- collection of organic products;
- Collection of blood products;
- Collection and treatment of hospital waste;
- Collection, treatment and laundering of linen;
- Control and analysis of samples taken from products, equipment and materials subject to mandatory standards;
- Technical control of equipment and furniture;
- Survey of panels of travellers and/or tourist operators and/or transporters and/or journalists and/or any other target with an interest in tourism;
- Household panel survey;
- Servicing and maintenance of aircrafts, navigating combat units, their assemblies and sub-assemblies and their support equipment, including the supply of spare parts;
- Maintenance and repair of equipment and machinery;
- Civil engineering tests;
- Tests and checks of the conformity of construction materials with technical standards and rules;
- Water study and analysis;
- Geotechnical studies;
- Studies regarding the choice of land and soil analyses;
- Evaluation of the quality of services of public telecommunications networks;
- Expertise in hydraulic works;
- Expertise and technical control of buildings and engineering structures ;
- Expertise and technical control of containment systems at sea;
- Staff training;
- Interpretation of dam monitoring measurements;
- Rental of medical imaging equipment (hardware and software), particularly magnetic resonance imaging (MRI) and scanner;
- Rental of medical-technical and haemodialysis equipment (hardware and software), including the supply of consumable haemodialysis products (Kits);
- Rental of audio-visual and conference equipment;
- Rental of aircrafts for the aerial treatment of forest defoliating insects and the fight against plant parasites and pests;
- Rental of computer equipment;
- Rental of equipment and machinery;
- Maintenance, servicing and calibration of technical equipment, hardware and computer software;
- Operations of docking, transit, handling, stevedoring, storage of equipment, furniture and various products and the interventions linked to them;
- Service involving the servicing and maintenance of technical, electrical, electronic, scientific, medical and telecommunications equipment, including the supply of spare parts;
- Handling service ashore and afloat;

- Technical assistance services for military equipment;
- Kidney dialysis services;
- Reprographic services, including the printing of plans;
- Topography and bathymetry services related to the installation of aquaculture farms;
- Catering and accommodation;
- Translation of documents;
- Cash transport;
- Transport and handling of equipment, furniture, products and documents;
- Transport of personnel and equipment intended for the Royal armed forces and the Royal gendarmerie;
- Medical transport by helicopter.

B. Services which may be the subject of framework contracts for a period of five (5) years

- Supply of laboratory reagents with provision of automatons (laboratory equipment);
- Supply of haemodialysis kits with provision of generators;
- Archive management.

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ANNEX NO.3: LIST OF SERVICES THAT MAY BE THE SUBJECT OF RENEWABLE CONTRACTS

A. Services which may be the subject of renewable contracts for a period of three (3) years

I) Work

–Servicing and maintenance work on green spaces.

II) Supplies

–Acquisition of geographical, climatological, oceanographic and bathymetric information system data;

–Acquisition of satellite images.

III) Services

–Audit of manufacturers, manufacturers' mandataries or vehicle resellers and the conformity of vehicles offered for sale on the Moroccan market;

–Audit of roadworthy test networks and centres ;

–Audit and external control of authorised driving education, road safety education and vocational training institutions;

–Maintenance of construction machinery and equipment;

–Servicing and maintenance of computer equipment (hardware, software and software packages);

–Servicing and maintenance of technical, electrical, electronic, scientific, medical and telecommunications equipment, including with or without the supply of spare parts;

–Maintenance and cleaning of administrative buildings and gardening;

–Guarding and surveillance of buildings and other administrative sites;

–Stray animal control services;

–Service to combat nuisance vectors (disinfestation and rodent control of hospital premises and spaces);

–Audit, assistance, legal, accounting and tax advice services;

–Stretcher, nursing, invoicing, payroll processing, medical secretary, reception and assistance services;

–Call centre, telemarketing and teleservice services;

B. Services that may be the subject of renewable contracts for a period of five (5) years

–Hosting and outsourcing of information systems;

–Rental of medical gas production equipment including consumables and maintenance of this equipment;

–Rental of licences for use of computer software;

–Rental of means of transport (cars and coaches) with drivers or without drivers and with or without the supply of fuel and lubricant.

ANNEX NO. 4: LIST OF SERVICES THAT MAY BE THE SUBJECT OF PURCHASE ORDERS

I) Work

- Work to develop green spaces with or without the supply of seeds and plants;
- Work to develop and maintain military installations;
- Work to develop, maintain and repair administrative buildings;
- Work to develop, maintain and repair military housing;
- Work to develop, maintain and repair structures, roads and networks ;
- Work to equip and strengthen medium voltage and low voltage electricity network poles;
- Work to install various equipment;
- Work to connect and extend the drinking water and electricity networks;
- Work to connect to the sanitation and cleaning network.

II) Supplies

- Purchase of posters and advertising items;
- Purchase of animals;
- Purchase of vision correction items and items for people with special needs;
- Purchase of drugstore, hardware, electricity, carpentry and sanitary plumbing items;
- Purchase of clothing;
- Purchase of badges, medals, effigies, pennants, flags and portraits;
- Purchase of fuels and lubricants;
- Purchase of school bags, books, manuals, and school supplies and teaching equipment;
- Purchase of geographical, topographical, geological maps and aerial photographs;
- Purchase of office supplies and documentation;
- Purchase of building materials;
- Purchase of audio-visual, sound and lighting equipment;
- Purchase of public lighting equipment;
- Purchase of diagnostic, research, detection, fault indication and measurement equipment;
- Purchase of navigation and transmission equipment;
- Purchase of safety and fire-fighting equipment;
- Purchase of transport equipment, cisterns and machinery;
- Purchase of electrical equipment, generators, electric pumps and construction site motor pumps;
- Purchase of scuba diving materials and equipment;
- Purchase of office equipment and furniture;
- Purchase of technical equipment, software and computer hardware;
- Purchase of equipment, cables, distribution boxes, poles and other accessories for medium voltage and low voltage connections;
- Purchase of sports equipment and items, bedding, linen, sleeping, kitchen and laundry equipment;
- Purchase of raw materials for laboratory and teaching;
- Purchase of raw materials for textiles, leather, binding of documents and others;
- Purchase of medicines;
- Purchase of furniture, teaching, laboratory and exhibition equipment;
- Purchase of stationery and printed matter;

- Purchase of spare parts and tires for vehicles and machinery ;
- Purchase of spare parts for medical-technical equipment;
- Purchase of spare parts for technical and computer equipment;
- Purchase of food products for animal use;
- Purchase of food products for human use;
- Purchase of chemical and laboratory products, pesticides and insecticides;
- Purchase of printing, reproduction and photography products;
- Purchase of non-medicinal pharmaceutical products, medical gases and laboratory reagents;
- Purchase of products for drinking water treatment;
- Purchase of veterinary products and aquaculture products;
- Supply of fry, spats, seaweed cuttings, marine animals and fishes;
- Supply of fertilizers, seeds, plants, seedlings and racks;
- Supply of medical-technical equipment and related spare parts;
- Supply of fuels and heating products;
- Supply of films and radiological products;
- Supply of medical fungibles and surgical threads;
- Supply of medical-technical instrumentation;
- Supply of prostheses and orthoses;
- Supply of bags and packaging products ;
- Supply of glassware, small equipment and laboratory tools;
- Supply of dental consumables;
- Supplies and spare parts for technical and computer equipment;
- Maintenance and cleaning supplies and products;
- Supplies for inauguration and laying of foundation stones;
- Supplies for the processing and preventive conservation of archives.

III) Services

- Purchase of freelancers;
- Purchase, development, production or co-production of programmes or films intended for broadcast by radio and television broadcasting organisations and on electronic sites and broadcasting time ;
- Collection of organic and blood products;
- Technical control and expertise;
- Direction, animation and participation of artists, intellectuals, lecturers and technicians in cultural events and activities;
- Servicing and maintenance of software and software packages;
- Servicing and maintenance of computer equipment;
- Maintenance and repair of technical equipment, furniture and technical installations;
- Maintenance, dust removal and chemical treatment of archives and books;
- Studies, advice and training;
- Rental of machinery and means of transport of equipment and materials and machinery;
- Rental of tank trucks;
- Rental of equipment and furniture;
- Rental of means of transport for people (cars and coaches);
- Rental of rooms, stands and exhibition furniture;
- Assembly and disassembly of hydraulic and electromechanical equipment;
- Organization of cultural, scientific and sporting events;
- Gardening, security and cleaning services;
- Technical, legal and accounting assistance and consulting services;
- Vehicle and equipment maintenance services;
- Maintenance, rebalancing, calibration and repair services for laboratory equipment;

- Printing, reproduction and photography services ;
- Call centre, telemarketing and teleservice services;
- Hospital waste collection and treatment services;
- Collection, processing and laundry services ;
- Counting point control services;
- Control and analysis services for samples taken from products, equipment and materials subject to mandatory standards;
- Removal services;
- Disinfestation, rodent control and stray animal control services;
- Services for the implementation of technical management and leak detection tools;
- Advertising, awareness-raising and multimedia support services;
- Fire extinguisher repair and recharging services;
- Hotel, accommodation, reception and catering services;
- Geotechnical and laboratory services ;
- Medical, hospital, radiological, medical analysis and stretcher services;
- Topographic and oceanographic services ;
- Simultaneous translation and translation of literary, scientific, cultural or legal documents and works;
- Transport, stevedoring, storage and transit.

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