

**INFORMATION REQUESTED FROM STATES PARTIES AND SIGNATORIES IN RELATION TO INTEGRITY IN PUBLIC PROCUREMENT PROCESSES, TRANSPARENCY AND ACCOUNTABILITY IN THE MANAGEMENT OF PUBLIC FINANCES(arts9 and 10)**

### **Measures taken to secure integrity in public procurement processes (art. 9.1)**

Rwanda has elaborated and implemented the law n°05/2013 of 13/02/2013(the 2013) modifying and completing the law n°12/2007 of 27/03/2007(the 2007 law) on public procurement and the ministerial order n° 001/14/10/tc .of.19/02/2014 establishing regulations on public procurement, standard bidding documents and standard contracts (the ministerial order).

Principles governing the public procurement are transparency, competition, economy, efficiency, fairness and accountability (art. 4 of the law n°12/2007 of 27/03/2007 on public procurement).

In consideration of the article 9,1 of the UNCAC, important issues addressed by the above-mentioned legal instruments are the following:

**1. Public procurement planning which includes** the following aspects: identification of needs, identification of priorities, indication if it is necessary to carry out a prior study for tenders of works, identification of the procurement method to be used for any planned tender, estimation of the value of the planned tender, specification of the source of funds for that tender, determination of the necessity to grant local preference to international tenders, specification of the need for request for approval prior to the award of contract, planning for the schedules in which different processes of tendering shall be carried out, planning for the execution schedules of the contract (art.2 of the ministerial order ).

**2. Publication of the public procurement plan:** "Any communication between the procuring entity and the bidder shall be made in writing" (art. 7 of the 2007 law). "Some of the elements of the procurement plan namely title and quantity of the tender, method of tendering, source of funds, expected publication and execution dates shall be published. " (Art. 3 of the ministerial order). The advertisement should be made by the information which be "posted on the official website of the procuring entity, posted on the RPPA official website, advertised in at least one

newspaper of wide circulation, which may be national or international and displayed on the procuring entity's notice board." (Art. 3 of the ministerial order)

**3. Establishment of internal tender committee composed of** be composed of five (5) or seven (7) persons appointed "for a term of three (3) years which can be renewed only once (1)" (art. 8 of the ministerial order). According to art. 10 of the ministerial order, the following officials are not allowed to be members of the internal tender committee: the head of a public body, the members of Executive committees of Districts and the City of Kigali, the chief budget manager, the Head of finance Unit, the internal auditor, the legal advisor, the officer in charge of logistics.

**4. Procurement methods** which are open competitive bidding, two-stage tendering, restricted tendering, request for quotation, single sourcing, simplified method, force account and community participation (art.23-58 of the 2007 law).

**5. Ways and organs for review** including the administrative review organs (the procuring entity, the District Independent Review Panel or National Independent Review Panel as provided by art. 70 of the 2007 law). Art. 69 of the 2007 law provides for review:

- Gracious review is addressed to the procuring entity within 7 calendar days from the date where the administration fact occurred
- Review to Independent Review Panels within 7 calendar days following the time the complainant became aware of the circumstances giving rise to the complaint or should have become aware of those circumstances
- The right to review in front of the jurisdiction against a decision taken before the signing of the contract is prescribed after 30 days taking course from the date of signing the contract.

**6. Anti-corruption measures: (art. 15 of the 2007 law and art.10 of the 2013 law)** "It is strictly prohibited to solicit directly or indirectly, offer to any official or a former employee of the procuring entity or other public authority, a bribe in any form, an offer of employment or any other service or anything of value meant to compromise someone with respect to any act or decision in connection with the procurement proceedings. The Tender Committee shall reject

any bidder's offer where it is established that the latter was engaged in any corrupt or fraudulent practices while competing for a public procurement contract."

**7. Conflict of interests (art. 11 of the 2013 law):**

"Members of the Cabinet, Heads of procuring entities, members of council of a District, those of the Sector and Civil Servants in general shall not bid for public tenders. A firm in which a civil servant, his/her spouse or his/her child is a shareholder, representative or member of the Board of Directors shall not participate in procurement proceedings within the entity where that civil servant is an employee.

It is prohibited for members of the tender committee or any other person involved in the procurement award process or the management of procurement contract in which the following persons have participated:

- 1° his/her relative up to the second degree in direct line and to the third degree in collateral line;
- 2° his/her former employer except after five (5) years he/she ceases to be his/her employee;
- 3° a person with whom they have a financial interest;
- 4° the bidder has an agreement with them or she/he is expecting employment or any other benefit from them.

A consultant who has been hired by a procuring entity to provide consulting services for the preparation and implementation of a tender or a company connected to the consultant shall not be allowed to bid for providing goods, works or consultant services related to that tender."

**8. Debarment of bidders (art. 12 of the 2013 law):**

"He/she shall be debarred from participation in public procurement for five ( 5) years any bidder who provides false information regarding the company, its documents, its capacity, who is found guilty of violating laws to obtain a procurement contract, who is found guilty of forgery and the use of forged documents in public procurement, who uses false public procurement contract so as to get a bank loan, who changes address without informing the contracting authority. He/she shall be debarred from participation in public procurement for four (4) years a bidder who makes

collusion with other bidders with the intention to interfere with the fair competition of competing bidders, who makes fraudulent over estimated prices, who makes collusion with public official concerning the preparation of bidding documents. He/she shall be debarred from participation in public procurement for four (4) years a bidder who poorly performs or does not perform his/her contract obligations for reasons that are not connected with the procuring entity. Recidivism shall lead to indefinite debarment.”

For effective coordination of public procurement, Rwanda has put in place RPPA (Rwanda Public Procurement Authority) empowered "to ensure organization, analysis and supervision in public procurement matters" (art.3, 1° of the law N°25/2011 of 30/06/2011 establishing Rwanda Public Procurement Authority (RPPA) and determining its mission, organization and functioning). RPPA conducts procurement audits and provides substantial recommendations. Other entities empowered to conduct audit such as the Office of the Ombudsman, the Office of the Auditor General of State Finances, the Province and the District provide recommendations to audited bodies in order to comply with the law of public procurement.

RPPA publishes on its website the blacklist of debarred bidders. Moreover, it has carried out the classification of bidders according to their technical and financial abilities so that each bidder participates in a bid fitting with his/her category in terms tender value.

Articles 628-632 of the organic law N° 01/2012/OL of 02/05/2012 instituting the penal code provides penalties (imprisonment and fine) against any person who violates the law on public tenders (art. 628), who awards a tender to an unqualified bidder (art. 629), who awards unjustified advantages during the performance of contract (art. 630), who colludes with bidders ( art. 631), who awards tender without open competitive bidding (art. 632).

**Measures to promote transparency and accountability in the management of public finances (art 9, 2) are the following:**

**1. Preparation and adoption of national budget:** Institutions and local government entities prepare their annual action plan and budget to be presented to the Ministry of Finance and Economic Planning for consultation whereby priorities and financial ceilings are fixed. The consolidated budget of Central Government is approved by the Cabinet which submits it to Both Chambers of the Parliament as finance bill for the next financial year. The State Finance Law is adopted by the Chamber of Deputies after consultation with concerned organs. The Chamber of Deputies examines the relevance of the State fiancé bill, but "before the final adoption of the Budget, the Senate must provide the Chamber of Deputies with its opinion on the State finance bill" (art. 79 of the Constitution of the Republic of Rwanda of 04 June 2003 as amended to date).

The budget of decentralized entities is adopted by their respective Councils before the beginning of the fiscal year to which they relate (art.5 of the organic law n° 12/2013/OL of 12/09/2013 on State Finances and Property).

According to the article 79 of the Constitution of the Republic of Rwanda of 04 June 2003 as amended to date, "The Parliament shall receive the Budget implementation report for the first semester of the current fiscal year presented to it by the Cabinet before examining the budget of the next fiscal year." The Auditor General of State Finances submits to the Parliament the audited State consolidated financial statements of the previous financial year before the commencement of the session devoted to the examination of the Budget for next financial year.

The implementation of the State finance law is monitored by the Ministry of Finance and Economic Planning. Furthermore, the Chamber of Deputies and the Council of the decentralized entity have powers to revise the respective proposed budgets without altering the fiscal balance.

In preparation of the budget, institutions organs play a fundamental role because they determine their action plan in line with their attributions. At local government level, the participation of citizens is highly taken into consideration because they are consulted for their suggestions concerning the activities plan. To that effect, the budget preparation is participatory.

In order to ensure the fair management of public funds, " The Chamber of Deputies shall have the authority to require members of Cabinet and chief budget managers to appear before it and explain policies, programs and utilization of their budget. The Council of the decentralized entity shall have the authority to require members of the Executive Committee and chief budget manager to appear before it and explain policies, programs and utilization of the budget of the concerned decentralized entity." (art. 11 of the organic law n° 12/2013/OL of 12/09/2013 on State Finances and Property).

## **2. Reporting on revenue and expenditure**

Public entities shall prepare and submit monthly financial statements to the Ministry by the fifteenth (15th) day following the end of the month. Quarterly budget execution reports approved by competent authorities are submitted to the Ministry of Finance and Economic Planning which submits a quarterly consolidated budget execution report to Cabinet and a mid-year consolidated budget execution report to the Chamber of Deputies. According to art. 66 of the organic law n° 12/2013/OL of 12/09/2013 on State Finances and Property, "Public institutions shall also prepare and submit their annual financial statements in a period of two (2) months from the end of the fiscal year. All public entities shall submit their annual financial statements to the Auditor General of State Finances not later than 30 September of the following fiscal year."

The Office of the Auditor General of State Finances conducts audit of public bodies, provides recommendations to audited entities and submits the reports to both Chambers of Parliament. The Parliament requires the officials of bodies to appear before it to explain the causes of mismanagement of public funds detected by the Office of the Auditor General of State Finances. Some cases are transferred to the National Public prosecution Authority for judgment.

Non compliance with the legislation governing the management of public funds is subject to sanctions which can be administrative sanctions against a public officer, against an entity (withholding of treasury transfers of the entity and/or freezing of the entity bank accounts by the Minister of Finance and Economic Planning) or penal sanctions.

### **3. Effective system of accounting and auditing**

According to the article 63 of the organic law n° 12/2013/OL of 12/09/2013 on State Finances and Property "The Accountant General shall be responsible for monitoring and coordinating accounting activities and for setting and promoting compliance with the accounting and financial reporting standards applicable to public entities."

### **4. Effective and efficient system of risk management and internal control**

Internal controls are processes designed to provide reasonable assurance regarding reliability of financial reporting, effectiveness and efficiency of operations, safeguarding the Government resources/assets at the disposal of the entity and compliance with applicable laws and regulations. Each public entity should have internal auditor. It is required to set up an internal audit committee responsible "to provide oversight to the financial management of the entity." (art.2 of ministerial instructions n° 004/09/10/min of 01/10/2009 for the establishment of the audit committees in public entities, local government entities and autonomous and semi-autonomous public entities )

The Government Chief Internal Auditor is "responsible for providing indicators for internal audit and risk management and monitor and coordinate services of internal auditors in public entities." (art. 70 of the organic law n° 12/2013/OL of 12/09/2013 on State Finances and Property). It has been established the Office of Auditor General of State Finances "responsible for auditing of state finances and property" (art. 184 of the Constitution of the Republic of Rwanda as amended to date) and empowered to "carry out financial and property management audit to ensure compliance with applicable laws and regulations, proper use of finances and property and ascertain if finance and property were managed appropriately" (art. 6 of the law n° 79/2013 of 11/09/2013 determining the mission, organization and functioning of the Office of the Auditor General of State Finances).



**Civil and administrative measures to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue to prevent falsification of such documents**

The Ministry of Finance and Economic Planning has elaborated the *Manual of Government Policies and Procedures: Financial Management and Accounting* in application of the article 13 of the organic law n°37/2006 of 12/09/2006 on State Finances and property as amended to date. The Manual aims at setting out financial policies and procedures (Volume 1), prescribing the uniform chart of accounts through Government (Volume 2), covering books of accounts, book-keeping and accounts (Volume 3), dealing with financial reporting requirements and procedures including the required government consolidated financial statements (Volume 4).

Rwandan Government initiated the Integrated Financial Management System (IFMS) intended for use by all the Budget Agencies. The system is designed to be centrally controlled at the headquarters of the Ministry of Finance and Economic Planning. In general, the rollout and operation of the IFMS system throughout government is the responsibility of the Accountant General with the support of the Director of Public Accounts and ICT personnel in the Ministry. Nonetheless, the chief budget manager and/or the person responsible for the finance function at the budget agency have a primary responsibility to ensure that the system has been installed at the agency and that it is properly operational.

**Public reporting (art. 10 of UNCAC)**

In order to promote the culture of disclosing information about the activities of public and private organs as well as to ensure effective management of public funds, Rwandan Parliament has passed the law n° 04/2013 of 08/02/2013 relating to access to information which enables the public and journalists to access information possessed by public organs and some private bodies and establishes modalities and procedures to promote the publication and dissemination of

information. Concerned private entities "are those whose activities are in connection with public interest, human rights and freedoms." (art. 13)

In order to facilitate the access to information, "A public organ shall appoint or designate an information officer for that organ and its branch, if there is any, to enable it to provide information to persons requesting for it" (art.8 ). Information is "requested by an individual or a group of persons in any of the official languages provided for by the Constitution of the Republic of Rwanda verbally, in writing, by telephone, internet or any other means of communication" (art.9).

The Rwandan Government urges citizens to report corruption cases. In this line, the Parliament has passed the law n° 35/2012 of 19/09/2012 relating to the protection of whistleblowers of which purpose is "to protect, in public interest, whistle-blowers who denounce illegal acts and behaviors in public, private institutions and elsewhere". (art.1) A whistle-blower may be civil servant, an employee of a public or private entity and any other person who discloses to relevant organ the information on his/her possession. However, "it is prohibited for a whistle-blower to disclose false information on the grounds of hatred, jealousy or potential conflict between the whistle blower and the person subject to whistle-blowing. It is also prohibited to make a whistle-blower disclosure against a person in the interest of the person he/she seeks to protect or with intent to defame and dishonour the individual or the entity subject to whistle blower disclosures." (art. 8)

In order to promote public administration accountability, the Rwandan Government established the concept of *open days* whereby the officials provide explanations to the public and interact with the citizens on organs activities. This is the practice in central Government organs as well as in decentralized entities.

**Actions required for improvement of the measures above described:**

- To increase the number of audited entities yearly;
- To enhance the capacity of auditors;

- To ensure regularly the implementation of recommendations provided;
- To raise citizens 'awareness in relation to public administration accountability.

**Challenges:**

- Public unaware of its right to access to information;
- Officers who do not respect their obligations as regards tenders awarding and monitoring;
- Insufficiency of equipments;
- Propensity to corruption.

**Technical assistance**

Technical assistance is required for capacity building and equipments.

**INFORMATION REQUESTED FROM STATES PARTIES AND SIGNATORIES IN  
RELATION TO MEASURES TO PREVENT MONEY-LAUNDERING (ART.14)**

The organic law N° 01/2012/OL of 02/05/2012 instituting the penal code defines in its article 652 money laundering and determines in its article 654 penalties against any person who commits money laundering or an accomplice.

The law n° 47/2008 of 09/09/2008 on prevention and penalizing the crime of money laundering and financing terrorism provides for transparency in financial transactions by securing money transfer (art. 6), cash declaration at the border (art.7), professional secrecy (art. 8), Prohibition of fictive banks and anonymous accounts (art. 9), identification of customers (art.10), Identification of casinos, gaming halls and their customers (art. 11), identification of other non-financial businesses and professions (art. 12), identification of occasional customers (art. 13), identification of the owner (art. 14), special monitoring of certain transactions ( art. 15), due diligence related to a political leader (art.16), record-keeping (art. 17), declaration of cash transactions (art. 18), programs of reporting authorities (art.19), declaration of suspicious, establishment of Financial Investigation Unit (art. 20), transactions and funds (art. 21).

In relation to money laundering, cooperation between Rwanda and other States has been highlighted” in the exchange of information, in investigation and in procedure, with regard to protective measures, seizures and confiscations of the instruments, funds and property related to money laundering and financing of terrorism, for purposes of extradition, and for purposes of mutual technical assistance” (art.28 of the law n° 47/2008 of 09/09/2008 on prevention and penalising the crime of money laundering and financing terrorism).

Other legal instruments into force are the following:

- Law N° 007/2008 of 08/04/2008 concerning organization of banking;
- Law N° 40/2008 of 26/08/2008 establishing the organization of microfinance activities;
- Regulation N° 06/2013 of 21/10/2013 governing foreign exchange bureaus.

**Actions required to improve the measures above-described:**

- Banks and non-bank financial institutions should act in synergy for effective prevention of money laundering activities;
- Establishment of effective mechanisms to prevent money laundering by use of electronic means.

**Challenges:**

- Lack of enough skills for staff;
- Insufficient detecting mechanisms.

**Technical assistance**

Technical assistance is required for capacity building of the concerned staff and establishment of effective mechanisms for detecting cases of money laundering.

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